United States Court of Appeals for the Second Circuit

APPENDIX

77-2103

UNITED STATES COURT OF APPEALS

THE SECOND CIRCUIT

LOUIS OSTRER,

Petitioner, Appellant

-against-

UNITED STATES OF AMERICA,

Respondent-Appellee.

On Appeal From the United States District Court
For The Southern District of New York.

Appendix to Brief of the Petitioner, Appellant
Volume II

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PAGINATION AS IN ORIGINAL

TABLE OF CONTENTS

VOLUME II

Portions of trial transcript in United States v. Dioguardi and Ostrer, 71 Cr. 558, January 8, 9, 10, and 11, 1977-- 699

Hellerman cross------------------------- 699
Hellerman redirect---------------------- 929
Hellerman recross-----------------------1046
Goldberg closing------------------------1075
Edelbaum closing------------------------1124
Government's closing--------------------1169
Judge's charge--------------------------1206

CROSS-EXAMINATION

BY MR. GOLDBERG:

Q Mr. Hellerman, how old are you?

A 34.

Q And in 1962 what was your business or occupation?

A I think I was building a hotel in Nevada.

Q Were you ever a registered representative?

A Yes.

Q When were you a registered representative?

A 1959 or '60, I believe, sir.

Q Were you ever barred from further activity --

A YEs.

Q -- by the Securities & Exchange Commission or the New York Stock Exchange because of misconduct?

A The SEC, sir.

Q What is that?

A By the SEC.

Q And when was that?

A Around 1961 or 2.

Q You didn't know the defendant Dioguardi then, did you?

A Thta's just about the time I met Johnny.

Q Were you barred by the SEC for certain misconduct that you had engaged in prior --

MR. MC GUIRE: I object to further examination of this kind unless Mr. Goldberg intends to show criminal acts.

THE COURT: I can't hear you.

MR. MC GUIRE: I object to further examination of this kind unless Mr.Goldberg intends to show criminal acts.

MR. GOLDBERG: May I be heard?

THE COURT: You may be heard at the side bar. Mr. McGuire has raised an objection. He would like an answer.

(At the side bar)

MR. GOLDBERG: The disbarment of a lawyer or a man from the SEC but particularly, say, a lawyer has been held by the Court of Appeals to be a proper subject for cross-examination. The witness Hellerman has suggested that all his involvement in stock frauds were a result of a partnership that he had with the defendant Dioguardi. I submit that I should be able to show his maneuverings in this regard prior to the time that he met Dioguardi and subsequent to the time that he last saw Dioguardi lest the appeal be made before the jury that all of these stock swindles are the result of the direction of the defendant Dioguardi.

But on the issue of credibility, I submit that a barring by the SEC because of what I yet don't know, and it may very well be criminal acts, is something that is a proper subject of inquiry at least on the issue of credibility.

MR. MC GUIRE: Your Honor, without objection Mr. Goldberg has brought out that this witness was barred from acting as a registered representative in proceedings conducted by the Securities & Exchange Commission. I did not object to that although it is probably not proper cross-examination, in any event, to show that kind of misconduct unless a foundation can be laid that there were criminal acts.

But to explore the circumstances under which that disbarment, if you will, took place which the record indicates clearly shows no criminal acts I suggest is not to be tolerated. If Mr. Goldberg cares to make an offer of proof on this point, it might be appropriate.

MR. GOLDBERG: It is difficult without knowing the facts.

THE COURT: There are so many difficulties but they have to be met.

MR. GOLDBERG: The difficulty is that I

submit the disbarment --

THE COURT: Are you prepared to make an offer of proof now?

MR. GOLDBERG: No, other than the fact of the disbarment, I amnot.

THE COURT: And what inquiry would you proceed to make?

MR. GOLDBERG: I would ask what was the nature of the conduct that prompted his disbarment.

THE COURT: And that is what you object to?

MR. MC GUIRE: Yes, I do.

MR. GOLDBERG: That is all I would ask.

THE COURT: Objection sustained.

(In open court)

BY MR. GOLDBERG:

Q When is the last time you acted as a registered representative?

A 1961, '62.

THE COURT: Keep your voice up.

A 1961 or '62.

Q You have referred here on a number of occasions to people who are your customers, do you recall having said that?

A Yes.

Q Do I take it to mean that customers of J. M. Kelsey & Company?

A Yes.

Q And you told us, I believe, that you were an undisclosed principal of J. M. Kelsey Company?

A Yes, sir.

Q Had you been barred by the SEC from being a principal in any brokerage firm?

A Yes, sir.

Q And had you violated that order by becoming an undisclosed principal?

A Yes, sir.

Q Has anybody in the government suggested that you would be prosecuted or proceeded against for having disobeyed the order of the SEC?

A No, sir.

Q Now, as a matter of fact -- withdrawn.

When J. M. Kelsey & Company was formed, it was formed by a contribution of capital, is that correct?

A Yes, sir.

Q And the contribution of capital was what sum of money?

A I think it originally opened with about

$5000.

Q Did you finally contribute $50,000 to J. M. Kelsey & Company, you or your mother?

A No.

Q How much money did you and/or your mother contribute, if any, to the formation and continuance of J. M. Kelsev & Company?

MR. MC GUIRE: Objection to the form of the question.

THE COURT: Sustained.

Q Was any money other than the original $5000 -- withdrawn.

Were you the source of that $5000 that went into J. M. Kelsey & Company when it was formed?

A Was I the source? May I -- going back, Mr. Goldberg? In other words, the answer to your question is no, the way you asked it.

Q Was your mother the source of the funds?

A No.

Q You said that you were the undisclosed principal in J. M. Kelsey Company, correct?

A I was one ofthe principals.

Q Where did the money come from for the operation of J. M. Kelsey & Company?

A From Jack Kelsey.

Q Did you contribute any money?

A To J. M. Kelsey & Company, no.

Q When you say you were the undisclosed principal of J. M. Kelsey & Company --

MR. MC GUIRE: Objection to the form of the question. The witness has not said the undisclosed principal. He said an undisclosed principal.

Q Were you an undisclosed principal in J. M. Kelsey & Company?

A Yes.

Q When you used that term undisclosed principal in J. M. Kelsey & Company, what did you mean?

A I had a hidden interest. I wasn't licensed by the SEC to have an interest in J. M. Kelsey. I wasn't licensed to have a broker's business.

Q You mean it was against the law for you to have an interest?

A Yes, sir.

Q In view of your past conduct?

A Yes, sir.

Q And other than having this hidden interest in J. M. Kelsey & Company, did you make any contributions of capital to J. M. Kelsey & Company?

A No, sir.

Q Did you make any contributions of monies to J. M. Kelsey personally, Jack Kelsey personally, for the purpose of having him contribute it to J. M. Kelsey Company?

A Yes, sir.

Q And how much money did you give to J. M. Kelsey or Jack Kelsey for the express purpose of having him contribute it into J. M. Kelsey & Company?

A I would say approximately about $30,000.

Q And where did you get that money?

A A loan from my mother.

Q And were you aware -- withdrawn.

Did you ever counsel Jack M. Kelsey to file with the SEC documents which would secrete your interest in J. M. Kelsey & Company?

A By secrete --

Q Hide your interest.

A I don't understand.

Q Did you know at the time of the formation of J. M. Kelsey & Company that Jack Kelsey would have to furnish documents to the SEC?

A I told him not to.

Q Not to what?

A Not to furnish any documents.

Q When a broker -- did you know at the time J. M. Kelsey & Company was formed that documents would have to be filed with either the stock exchange or the Securities & Exchange Commission?

A Well, I told you, Mr. Goldberg, I was an undisclosed owner. Being an undisclosed owner, that means I didn't put my name on the application. Jack Kelsey put his name on the application.

Q Were you aware that Jack Kelsey had failed to disclose in documents filed with the SEC your interest?

A Definitely. I told him not to disclose it.

Q You told him to secrete your interest?

A Yes, sir.

Q You told him to file documents that were not truthful, correct?

A Yes, sir.

Q Jack Kelsey was your friend, right?

A Yes, sir.

Q Is Jack Kelsey any longer authorized to carry on a brokerage business?

A I don't know, sir.

Q You know as a matter of fact -- withdrawn.

J. M. Kelsey & Company was formed, was it not, for the express purpose of assisting you in carrying on your various stock frauds, isn't that so?

A No, sir.

Q Did it assist you in the carrying on of any of your stock frauds?

A Yes, sir.

Q Did you direct the conduct of Schoengold and Jack Kelsey to the end of assisting you in the conduct of various stock frauds?

MR. MC GUIRE: Objection as to form.

THE COURT: Sustained.

Q Did you give direction to Jack Kelsey and Steven Schoengold with respect to any stocks that were being manipulated?

A Yes.

MR. MC GUIRE: May we have times and places on this sort of thing?

MR. GOLDBERG: Yes, sir.

Q From the time it was formed until it went out of business?

A. Yes, sir.

Q Do you have that time fixed in your head?

A I think Kelsey and Company was formed in [illegible] and I don't know when it went out of business.

Q When it was formed in 1969, was not the Tabby International underwriting the first stock that J. M. Kelsey & Company dealt with?

A No.

Q What was the first stock?

A I can't tell you what the first trade was the office had. It may be an isolated of a hundred shares of General Motors. I don't know what the first trade was.

Q Did J. M. Kelsey deal in or trade in Imperial Investment stock?

A Yes, sir.

Q Was that a stock that was manipulated?

A Yes, sir.

Q Did you give directions to Steven Schoengold with respect to that manipulation?

A Yes, sir.

Q Did you use J. M. Kelsey & Company for the purpose of furthering that stock manipulation?

A Yes, sir.

Q Did you use J. M. Kelsey & Company for the express purpose of securing profits from that stock manipulation?

A Yes, sir.

Q At the time J. M. Kelsey & Company was formedin November of 1969, did you have a partner known as Murray Taylor?

A No.

Q Do you know Murray Taylor?

A Yes, sir.

Q What was Murray Taylor's role with respect to Imperial Investment?

A He was going to buy 70,000 shares of stock, a block of 70,000 shares of stock.

Q Did you make any agreement with Murray Taylor to split profits with him in Imperial Investment?

MR. MC GUIRE: Objection to his conduct with Murray Taylor.

THE COURT: Sustained.

Q Did you try, in January of 1970, to make a deal with George Drykerman with respect to Belmont Franchising?

A Did I try to make a deal?

Q Yes.

A No.

Q Did Fred Goodman tell you George Drykerman had characterized you as a swindling bum?

A No.

Q Or as a crook, a fat crook?

A No.

Q Now, am I correct that the last time you saw the defendant Johnny Dioguardi alone and conferred with him in private was sometime in late 1970, is that correct?

A Yes, sir.

Q So you haven't seen him alone or conferred with him for well over two years, is that correct?

A Yes, sir.

Q Now, in those two years, Mr.Hellerman, am I correct to say thatyou engaged in a number of violations of law?

A Yes, sir.

Q Did you engage in the counterfeiting of bank checks with a man named Marx?

A I am confused. Counterfeiting --

Q Did you ever counterfeit, that means alter or prepare a counterfeit check?

A Bank checks, no.

Q Did you ever submit any fraudulent check to any Bahamian bank?

A Did I ever submit --

Q Did you ever participate in the submission?

A Yes, sir.

Q And how much or how many checks that were so fraudulent did you submit to the Bahamian bank?

A I don't know. I didn't submit them.

Q When you say you didn't submit them, were you in on the plan of submission of those fraudulent checks?

A I was in on the profit. I don't know how many checks were submitted.

Q You shared in the receipts?

A There were no receipts.

Q You made an attempt to secure moneys from an illegal transaction?

A Yes, sir.

Q How long ago was that?

A A year ago, around the time of the first Imperial trial.

Q Did the defendant Diog rdi tell you to do that?

A No, sir.

Q Did he direct you to do that?

A No, sir.

Q Did you give or offer or promise any portion of those profits that you hope to secure to the defendant Dioguardi?

A No, sir.

Q Who was in on that deal with you to submit fraudulent checks to the Bahamian bank, to a Bahamanian bank?

MR. McGUIRE: Objection to that.

THE COURT: I will allow it.

A You want the names of all the people?

Q Answer the question if you can.

A A lawyer in the Bahamas, Jerry Kapps.

Q Did you speak to him at any time?

A I had made an introduction, not about anything, about any crooked checks or anything.

Q Did you set him up?

MR. McGUIRE: I object to this line of cross-examination, your Honor. I would like to be heard at the side bar.

THE COURT: Ladies and gentlemen, this will consume at least five minutes, and that will take us to five o'clock.

Again, keep in mind my admonition. I will see you tomorrow morning at nine-thirty.

(Jury excused.)

(In the robing room.)

MR. EDELBAUM: While we are here, has your Honor received any report on the condition of Mr. Kelsey?

THE COURT: The examination was not scheduled until ten-thirty this morning.

MR. McGUIRE: May I be heard on my objection, your Honor? I have furnished the defense with information as to a good many crimes in which Mr. Hellerman has been a participant. I have no objection to Mr. Goldberg's cross-examining Mr. Hellerman about the nature of his participation in those crimes. However, it seems to be apparent that what Mr. Goldberg is trying to do here is conduct a discovery proceeding with respect to the facts of those cases in which as to the very first one he started examining him about.

Co-counsel, Mr. Panzer, represents the defendant.

MR. GOLDBERG: I know this is another instance of suggesting that I have a bad motive, Mr. McGuire, but I can assure your Honor that if that is the case, where Mr. McGuire feels that some sort of disclosure might prejudice the case in which Mr. Panzer is involved, I will desist now, with all due respect, but I would like some latitude.

If you feel that people's names would be detrimental to the Government's case, in that case, I will. But I want to get the general outline of that fraud, then his expectation for punishment in connection therewith, and his hope for favorable treatment at the hands of the Government. I am not too sure what government is involved yet. I don't know whether it is the Bahamian government. I don't know where the crime took place. But I want to assure your Honor -- and Mr. Panzer can support me -- Mr. Panzer never asked me to inquire of the case with respect to who the principals are, and I didn't know the first thing about Mr. Panzer's case, and to that extent that speaks of poor preparation on my part, because I didn't even go over with him the case that Mr. McGuire is apparently alluding to.

But if the Government says that it feels that it will prejudice the Government in some other investigation, I will desist, except for the general outline of the case.

MR. McGUIRE: I am not asking Mr. Goldberg or asking the Court to direct Mr. Goldberg to desist from proper cross-examination. Obviously, Mr. Goldberg is entitled to establish the nature of Mr. Hellerman's participation in other crimes. But when it gets to examining the witness about conversations that he had with other participants in those crimes and developing the entire skeleton of each of them as if it were the other crime and not this crime that is on trial here, I say that is too much. I think that it is a matter that is discretionary for your Honor, but I would like to make my position known on that well in advance.

MR. GOLDBERG: May I make one final comment, if I won't burden your Honor, and that is, of course, it is a matter of discretion, and you can very well foreclose me from any further inquiry. But your Honor's discretion, most respectfully -- and I need not even suggest this -- must be exercised with a mind or a view as to the nature of this kind of witness.

This is a critical key witness, where the cross-examiner should be given great latitude.

THE COURT: Mr. Goldberg, I don't think I have any great problem exercising my discretion in this area, because it appears to me that you have plenty of ammunition, plenty of information, plenty of indictments to probe to your heart's content without transgressing the limits of proper cross-examination.

MR. GOLDBERG: All right, your Honor. I will follow it to the letter.

THE COURT: My discretion might be somewhat differently directed if you had a paucity of information at your command.

B 2 MR. GOLDBERG: I see. It is true that the Government has furnished me with a good deal of information. The only thing I want to alert your Honor to, Mr. Hellerman does not say, "Yes, Mr. Goldberg, I did it." He is a witness who seeks to avoid an acknowledgement of wrongdoing. He made the introduction. It is very hard to get his participation.

THE COURT: I will not make any comment about that, but I repeat again: you have plenty of solid information on which to proceed without engaging in a discovery and inspection tour. I don't see that it helps us; I think it is a waste of time.

I will repeat ad nauseum, if I thought you were lacking sufficient material on which you could proceed, my discretion might be somewhat differently directed.

MR. GOLDBERG: I will observe your Honor's ruling. Do I take it, then, I will just ask him on this case that Mr. McGuire has mentioned, what it is that he did and whether he is the subject of investigation in connection with some conduct of his that he participated in, and let it rest there, and then show the motive, but not go into the conversations or the various acts of the particular people? I don't want to run counter to your Honor's ruling.

MR. McGUIRE: I think questions directed towards bringing out Hellerman's own participation in criminal activities are perfectly proper.

MR. GOLDBERG: I think Mr. McGuire's point is well taken. We can get off into a collateral trial of these other cases. I will limit my inquiry to what it is that Hellerman did and what it is that Hellerman fears and what it is that Hellerman hopes for

THE COURT: I think you will all think very carefully about moving along with dispatch. My concern for Mr. Edelbaum has put me in a bind. I am not at all happy about these short hours, in terms of what is being produced in the courtroom, and I don't know how long I am going to allow my concern to inhibit me to the extent that I have already done today and on previous occasions.

Now, if we continue to consume time that is unnecessary, I am just going to have to pick up the pace, and that is all there is to that.

MR. GOLDBERG: Can I say this, in terms of picking up the pace? I have no objection to whatever arrangements you want to have with respect to picking up the pace.

THE COURT: I am concerned with Mr. Edelbaum. I know you don't have any objection, and that reminds me of the story of my rooster.

MR. GOLDBERG: My mother is going in for a cardiac catheterization, which is a rather hazardous diagnostic procedure, and that is set for January 17th. Now, if I am not going to make it, I will have to have someone else do it for me. But it puts me in a difficult, trying dilemma. She is alone.

THE COURT: We have only talked about ourselves, but we have a jury to be concerned about. This is the second week of their term, and I don't want them to become irascible, and I don't want them to become irritable, and so we just have got to move along. These people are here at a sacrifice to their own personal lives; they are suffering economic loss, unlike you or me or Mr. Edelbaum or anybody in this room. I am concerned about that, too.

MR. GOLDBERG: If you want, I am willing to come in earlier. I come in from Tarrytown, but I would come earlier. I don't want to speak for Mr. Edelbaum.

THE COURT: Can we start at nine o'clock hereafter?

MR. EDELBAUM: I will start at seven o'clock.

THE COURT: We will start at nine.

MR. McGUIRE: Very well.

THE COURT: And we will try to go every day until five.

MR. GOLDBERG: I am up to it.

MR. EDELBAUM: May I make a phone call to ascertain the progress of the memorandum?

THE COURT: Of course. Do you want to use this telephone?

MR. EDELBAUM: Yes.

THE COURT: Do you want us to step out?

MR. EDELBAUM: No.

THE COURT: I will try to get you out of here by the 17th.

MR. GOLDBERG: I will appreciate it.

MR. EDELBAUM: Judge, the 17th is a Wednesday. There is the defense here. There are many witnesses.

THE COURT: The Government is going to take a hard look at its witness list. Perhaps they can give us some help by abbreviating it.

MR. EDELBAUM: There is going to be a defense here. I tell you that with great deference, and I think it will be an extensive defense. I have an obligation to a client.

THE COURT: I merely said I will try. If I don't succeed, I don't succeed. That is all.

MR. EDELBAUM: I am just as anxious to get out of this place as you are, but I cannot sacrifice time that I think my client is entitled to, to present his case. Now, I will tell you this: I willnot ad nauseum go over areas of misconduct of Mr. Hellerman, even though I may disagree on the method or the way my distinguished colleague does things, when he exhausts that. I think I have proved that by my examination, which was very short, of Goodman, in contrast to what happened with Mr. Goldberg.

So to that extent, when I see without any injury to my client that I can move the trial along, I will.

THE COURT: Let's try.

MR. EDELBAUM: I can tell you that. I think being put under pressure is worse to me than just going along in a normal trial in these hours. I think more can be accomplished. We could not help losing an afternoon because of some nonsensical feeling that Mr. Hellerman had with respect to this juror, which took time, or the fact that Mr. McGuire forgot this morning to tell us something, which took this whole afternoon. That should not be attributed to us.

THE COURT: It would have been time consumed this morning if it had not been time consumed this afternoon. If he had brought this to your attention this morning, you would not have sat by passively. I will work long hours, including Saturday, and when you say we all want to get out, you may want to get out, but I merely go on to another trial, to another piece of business.

MR. EDELBAUM: So do I. I have to go to other cases.

Are you telling us now that we have to work this Saturday?

THE COURT: That is my expectation.

MR. EDELBAUM: I made a commitment to 150 people in Florida.

MMP 11

THE COURT: I thought I had indicated that earlier, and it should not come as any surprise. I think we will continue this case on Saturday.

MR. EDELBAUM: The line is busy.

THE COURT: In any event, you won't have the memorandum today. You can have it tomorrow.

MR. EDELBAUM: I should have it by the morning, your Honor.

3

THE COURT: All right.

MR. EDELBAUM: Will we convene at nine o'clock?

THE CLERK: The jury was told nine-thirty tomorrow morning.

THE COURT: Nine-thirty.

MR. EDELBAUM: Good night.

THE COURT: Good night.

(Adjourned to January 10, 1973, at 9:30 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Michael C. Hellerman	409			
(Resumed)	579	606		
Stanley Wolchock	568			

EXHIBIT INDEX

Government	Identification	In Evidence
48		482
49		482
55		482
86		507
87		507

4 7 7 5

724

ATES DISTRICT COURT
ERN DISTRICT OF NEW YORK

[illegible]

[illegible]

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UNITED STATES OF AMERICA : Before
: HON. DAVID N. EDELSTEIN, D.J.
: and a Jury.

vs.

JOHN DIOGUARDI and : 71 Cr. 558
LOUIS OSTRER

Defendants

---x

4

New York, January 10, 1973

631-851

STENOGRAPHER'S MINUTES

SOUTHERN [illegible] RICT COURT REPORTERS
UNITED STATES COURTHOUSE
FOLEY SQUARE, N.Y. [illegible] TELEPHONE CORTLANDT [illegible]

UNITED STATES OF AMERICA

vs.

JOHN DIOGUARDI and
LOUIS OSTRER

January 10, 1973
9:50 a.m.

Trial resumed.

- - -

(In the robing room)

MR. EDELBAUM: Your Honor, I believe it was yesterday that your Honor informed us that before I commenced cross-examination of Mr Hellerman we would resolve this question of the written agreement and the areas of what your Honor felt on particularly No. 1 and the question of fear.

Mr. McGuire cited the Cirillo case, and I think I have pointed out quite clearly how the Cirillo case in no way is any authority for the proposition that I advanced here about the other matter being irrelevant to this situation about the fear in the agreement and that should not be permitted to come out before this jury.

That was the first situation that I talked to you about.

Of course, the other matter, I have made my application and I have submitted my memorandum and I have given your Honor the reasoning, and while there is no precise case exactly in point, I think the Williamson case which I have cited in the Fifth Circuit is where a government informer was paid on a contingent basis, and a reading of this agreement his reward that he is going to get by the non-prosecution of all these other cases is contingent on several things, and one of the things is being called to testify in any case if the government seems to feel that he should, and I think there is a clear analogy between the Williamson case and this case.

It just seems to me that it violates every conception of proper administration of criminal justice to enter into such a written agreement. I shudder to think that if I put a witness on the stand, as a lawyer for the defendant, and there was produced a similar document where I had made a payment for his testimony, I shudder to think what would have happened to me under such circumstances. And I very frankly cannot see any great difference between such a situation and the document which has been marked as 3500 material in this case.

THE COURT: Would you like to respond?

MR. MC GUIRE: I will respond to the second point that Mr. Edelbaum has raised before I respond to the other.

It seems apparent that there is all the difference in the world between paying an informant on a contingent basis, that is, offering specie; money, cash, to him if he will come in and produce evidence of crimes, which is to say, in effect, paying an informant to manufacture crimes. That is what the Williamson case in the Fifth Circuit was concerned about.

In the situation here, the differences are so obvious and so many I don't think it is necessary for me to go into them. That is the only authority that Mr. Edelbaum has cited in calling upon the supervisory power of the Court to explore the due, proper and fair administration of justice by the government, has called upon the Court to exercise that power to, in effect, declare this prosecution nul and void.

From the facts that were laid upon the

record yesterday, it seems evident enough that that kind of relief is not called for. After all, this witness, who is genuinely, and with good reason, in fear for his life, is now serving a two-year sentence. That is scarcely the kind of contingent payment to a witness which should disturb the Court in supervising the administration of justice.

Now, as to the other point, whether or not the prosecution on redirect will be entitled to bring out the witness' fear for his life, I say that that depends entirely upon the course of cross-examination. It is perfectly clear that the prosecution has not brought out any such fear on direct, and I think it is beyond dispute that we wouldn't be entitled to. I will tell the Court and counsel this: I have instructed Mr. Hellerman that so far as the government is concerned he is not to volunteer in answer to any questions on cross-examination the fact that he is afraid, but if he is pushed and if he is asked to explain the reasons why he is testifying for the government, he is to answer those questions truthfully, and I can tell everybody here that in my conversations with Hellerman his fear for his life and his anxiety to have his person and his family protected by the government are most important to him. And if during the course of cross-examination it becomes essential for him in order to tell the truth to answer questions as to his motivation with that answer, then I have said that although he is not to volunteer it in my opinion he is entitled to answer those questions truthfully.

As to redirect, I think the contingencies are so many it wouldn't serve any useful purpose to attempt to explore them all here.

MR. EDELBAUM: Of course, your Honor, if any lawyer cross-examining Mr. Hellerman should be stupid enough to ask him why he is testifying for the government, I can very well understand, but I am very much apprehensive that in view of Mr. McGuire's statement that if he is pushed -- what that means I don't know -- that he would come out with the fear of his life, I think at that time he should be cautioned by Mr. McGuire that he shouldn't volunteer anything other than what the question asks for, but if Mr. McGuire is telling me that if he is pushed -- I don't know what pushed means. Does it mean if he is cross-examined closely that is considered pushing to come out and say "I am testifying because I am in fear of my life," or something like that.

Of course, your Honor, we would have a disaster and we would have, in my opinion, a mistrial in this case. Of course, the questions call for certain answers and not explanations and if they are put in that light, I can't understand Mr. McGuire's statement, "Just do it in the prosecution on direct, but on the cross-examination, well, you are on your own."

That is almost what he said here.

THE COURT: I will try to suggest a procedure which might be helpful. I am not at all sure it will prove to be altogether helpful. If you would indicate, and Mr. Goldberg, if you chose to do so, and you, if you chose to do so, indicate in some broad way the line of cross-examination that you intend to pursue.

I also understand Mr. McGuire to be saying, as far as Cirillo is concerned, that he is in no position to talk about that at this time but he is also saying, if I understand him correctly, that ifthe Cirillo situation develops, he feels that he would have a perfect right to produce testimony as to certain fear. Is that what you are saying?

MR. MC GUIRE: Yes.

THE COURT: I also understand you to be saying that if a Cirillo situation is developed, before you would seek to elicit testimony concerning his motivation of fear, that you would ask for a side bar conference.

MR. MC GUIRE: Certainly, your Honor. I have made it clear I think to the Court and I have made it clear to the witness that unless it is absolutely necessary to answer a question truthfully, he is not to refer to his fear of his life.

THE COURT: And I would also raise one more flag at this point which perhaps will give us a further opportunity to evaluate testimony concerning fear if he feels, in response to a question, that the answer would require some statement by him about fear that when he comes to that point and he feels, to use your word "pushed," and I don't think you mean by that close, hard or critical examination --

MR. MC GUIRE: Of course not.

THE COURT: -- that he would ask for an opportunity to consult with you and the Court. How about that?

MR. MC GUIRE: Your Honor --

MR. EDELBAUM: I think it is a very good suggestion.

THE COURT: In other words, where he has a debatable question in his mind where he just doesn't know whether your suggestions concerning the precautions that you have indicated to him are in play, if he has any doubt, let him ask for a brief recess.

MR. MC GUIRE: That I think is an appropriate suggestion. But, your Honor, I want it to be made perfectly clear here that I am in no sense acting as Michael Hellerman's lawyer. I have not given him legal advice, I do not propose to give him legal advice.

THE COURT: I am aware of that.

MR. MC GUIRE: The situation between us is still to a large degree adversary. I think I am probably responsible as much as anybody in the United States Attorney's office for the fact that he is in jail at the present time. I don't want to be taken as being in a position of consulting with this man or giving him legal advice. He has his own lawyers whom he can call on if he feels he needs legal advice. But I have cautioned him that in the interest of justice there are certain things that in our view he must not do. I would prefer that the Court caution him to ask for a recess if such a question should arise.

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THE COURT: We are all aware of our problems, and they are mutual, really; they are not isolated. We are trying to wrap this in as much an antiseptic garment as we possibly can, trying in every possible way to raise enough red flags so that we don't get these problems before the jury. But we can only do what is humanly possible and no more. You are aware of that?

MR. EDELBAUM: Yes, your Honor.

THE COURT: Would it help any, do you think, to indicate in broad outline your line of cross examination?

MR. EDELBAUM: My whole cross examination? Or just on this issue?

THE COURT: Yes, on this issue. You are going to attempt to attack this witness' credibility because of his desire to gain the favor of the government and, consequently, to gain favored treatment?

MR. EDELBAUM: That is only a small part.

MR. GOLDBERG: That whole issue of favor if taken literally by Mr. Mc Guire can include, if we go into the question of favor, favorable treatment with respect to the protection of his life. In other words, I will limit myself to whether he is testifying here in an effort to avoid prosecution for these seven crimes that he

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committed in 1972.

THE COURT: Tell me gentlemen, in all candor, what more can I do than I have already done to attempt in every possible way to isolate this witness from making any statement and giving any answer which will create problems?

MR. GOLDBERG: I think you have done all you can, except perhaps Mr. Mc Guire has made a suggestion I concur in: Rather than Mr. Mc Guire cautioning him, since Mr. Mc Guire is in some way an adversary, since Mr. Hellerman does not feel that close with him to consult with him as an attorney would normally, Mr. Mc Guire made a suggestion that perhaps if your Honor saw fit, your Honor might caution him.

THE COURT: I don't see myself fit to do that, because I'm not at all sure what effect this might have. In order to give him all the precautions that I have in my mind would require a fairly exhaustive line of instructions, and that might have a coercive effect, and I am not sure that I want to do that, either. I think Mr. Mc Guire has given him precautions, and I accept his representation that he has done so, and I think just a further precaution by way of serving as my messenger -- and I don't mean that in any other sense than as a conduit, that I have asked you, requested you,

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THE COURT: Yes, but I have indicated that without being sure that I can succeed now. One juror has established a pattern of lateness, and that is Shields. She lives on 227th Street, and I think that this involves a rather long subway ride for her.

MR. GOLDBERG: Has she arrived?

THE CLERK: Yes.

MR. EDELBAUM: Has a report been received concerning the examination of the witness?

THE COURT: I have not yet received it. Would you please give me Dr. Blitzman's telephone number. I do not know Dr. Blitzman; I never met him. I called upon him on recommendation. I convinced myself that he is highly qualified.

There is another problem. Yesterday alternate Juror Mr. Moir asked to speak to me, and Rudy very wisely asked him to submit his request on the subject of what he sought to discuss with me in a letter, and so I have that letter. He says:

"I am in my third week of jury duty and I presently sit as an alternate.

"I serve as the chairman and president of United States Freight Company, a diversified transportation company.

"One of our principal subsidiaries is the Tropigas

736

International Corporation which transports, markets, and distributes liquid petroleum gas throughout the southeastern United States, Latin America, and the Caribbean. Tropigas has been negotiating with the Algerian government for a five year supply of liquid petroleum gas to be shipped into the United States where it is urgently needed in view of the increasing energy crisis. The authorities in Algeria have established January 15th as the date to complete the final negotiations. Tropigas executives will leave for Algeria this weekend for this purpose.

"The foregoing has necessitated the calling of a special directors meeting of Tropigas International at their home office in Miami, Florida, in order to determine and decide upon the various pertinent factors that will serve as a guideline when the Tropigas representatives begin final contract negotiations in Algeria on Monday.

"Tropigas International is a wholly owned subsidiary of U.S. Freight Company. As the chief executive of the parent company, it is critically important that I be in attendance at this special directors meeting on Friday.

"I, therefore, very reluctantly ask you whether there is any possible way in which I can be excused from my duty as alternate juror in order to attend this special directors meeting on Friday."

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Mark this.

(Court's Exhibit 1 was marked for identification.)

MR. GOLDBERG: I would consent.

MR. EDELBAUM: I leave it entirely up to your Honor.

THE COURT: I have an alternative suggestion. We recess tomorrow night until Monday morning?

MR. MC GUIRE: Well, your Honor, I am unhappy reducing the available supply of alternate jurors. We have used two already, and this is the flu season and we don't know how long this case is going to take. I think it would be unwise to excuse Mr. Moir. It may be, however, that we might usefully follow Mr. Edelbaum's suggestion in part -- I say "might" contingent upon the receipt of a report from Dr. Blitzman, as I believe he will recommend, that the witness Kelsey not be permitted to testify before a jury. It could be that we could usefully use Friday for the taking of his deposition under appropriate circumstances. I think there is not any way at this juncture that we can evaluate that situation, however.

THE COURT: Well, perhaps we can get a tentative report from Dr. Blitzman.

MR. GOLDBERG: Your Honor, a number of people have discussed their personal problems. I don't know that I have put this on the record yesterday - if I did, I desist -- and that is I have this critical appointment on January 17th. Norwalk, Connecticut is the major location for the conduct of this cardiac work.

(There was a pause in the proceeding, during which the Court talked to Dr. Blitzman on the telephone.)

THE COURT: His report is substantially to the effect that although Mr. Kelsey has suffered coronary and vascular incident of some significance, that, if necessary, he can stand a mild cross examination. He sees no reason why he cannot be deposed. He will have that report, asyou heard, at 5 o'clock. I will send a messenger for that report. Then you would proceed with depositions on Friday, is that it?

MR. MC GUIRE: That would be our plan, your Honor, to proceed with the deposition as soon as conveniently possible.

MR. EDELBAUM: I didn't understand your Honor's report. The doctor says that he could not be examined in the courtroom?

THE COURT: No, that is not what the doctor said. The doctor said he could be submitted for mild cross examination, but not arduous or strenuous cross examination, because that might entail some risks, and he is speaking about cross examination in the courtroom. He does not think that his condition is such that he cannot be deposed.

MR. GOLDBERG: I am a bit confused, too. Forgive me. Can he appear as a witness before the jury and subject himself to cross examination?

THE COURT: To mild cross examination.

MR. EDELBAUM: I will make a commitment right now, that if he is produced before a jury I will be as mild as possible, and I will make a commitment that I will talk in a law voice to him and be as gentle as I can in my cross examination.

THE COURT: How long is that cross examination going to take? He also speaksof mildness in terms of the character and the nature of the cross examination, as well as the time.

MR. EDELBAUM: No more, Judge, than is required by his direct testimony.

THE COURT: How long?

MR. EDELBAUM: I don't know.

THE COURT: I know you don't know, but this doesn't give us any answer. If this examination is going to take an extended period of time you are going to have the possible danger of a man dropping dead in the courtroom.

MR. EDELBAUM: That may happen in a deposition, too.

THE COURT: That is not so. You don't have the strains and tensions .

MR. EDELBAUM: If you will certify a report as required by Section 3503, of course I will go along.

MR. GOLDBERG: In fairness to the Court, since he did testify in the first Imperial trial he has had alleged a number of contacts with Dioguardi, so that the cross examination of him in a courtroom would have to be lengthy. I can't represent that it will be short, because he is a key, crucial kind of a witness. Mr. McGuire, I am sure, will acknowledge that he is a rather devastating witness to the defendant Dioguardi.

t2/3 am MR. EDELBAUM: Is there much on Ostrer with him, Mr. Mc Guire?

MR. MC GUIRE: Mr. Schaffer knows better than I.

MR. SCHAFFER: There is more with respect to Mr. Goldberg's client than with respect to yours, but there is not an insignificant amount with regard to Mr. Ostrer.

MR. GOLDBERG: Your Honor, Mr. Mc Guire had suggested in a conference that we had that perhaps this could take place in a courtroom with your Honor present. It would seem to me if that is what is planned, the only thing that is missing, I take it, is the jury, because Mr. Mc Guire would say that he ought to be brought in the courtroom with your Honor on the bench, counsel and everybody in attendance. If he is able to stand that --

MR. MC GUIRE: Mr. Goldberg has my suggestion a little wrong. My suggestion your Honor, for proceeding with this in the event your Honor should order that his deposition be taken, is that it be done in as low pressure and atmosphere as possible. I do not think that a courtroom with all of the courtroom panoply is the appropriate place to conduct the deposition, but I do not see any reason why for the convenience of the Court and counsel he cannot be brought to the courthouse.

I would suggest that the deposition be conducted, as most depositions are, around a table in a room with as pleasant surroundings as possible, and that the Court be present and exercise its supervisory and unbiased judgment on the spot as to the nature of any strains imposed upon the witness and to call recesses in the deposition if and as necessary.

THE COURT: Would it help if I could prevail on Dr. Blitzman to accompany him to this deposition? I don't know that he will do that. I really don't.

MR. EDELBAUM: I know cardiologists, how busy they

MR. EDELBAUM: Did he testify before the grand jury?

MR. MC GUIRE: Yes.

(The Court again talked to Dr. Blitzman on the telephone.)

are.

THE COURT: He assumed this obligation and made it very clear that this was a personal favor. I know his stature and I know his practice. But let me ask. All he can do is say no.

MR. EDELBAUM: May I make a suggestion: I think probably the best place to hold it, I think, your Honor, is in the conference room connected with your chambers. We can sit around the table there.

THE COURT: I will let you do it right here in this room.

MR. EDELBAUM: I thought it would be more convenient around a table.

THE COURT: Get Dr. Blitzman back for me.

Is Kelsey so important to you that you can't dispense with him?

MR. MC GUIRE: I would say, your Honor, that he is a rather important witness and we would like to have his testimony.

THE COURT: I know his name has been mentioned fairly prominently again and again and again. I am aware of that.

MR. MC GUIRE: He had personal contact with both ofthe defendants?

THE COURT: It's just impossible either Friday or Saturday. He is just booked to the hilt.

MR. EDELBAUM: Could we have a timetable what your Honor expected to do with respect to the juror?

THE COURT: Timetable, as far as the juror is concerned, in view of what seems to be the concensus here thatyou would rather adjourn Friday rather than lose another alternate, it meets with my approval, if that is your wish.

MR. MC GUIRE: I would suggest, your Honor, that under those circumstances we might fruitfully proceed with the plan that your Honor has expressed to continue trial on Saturday, if that would give the alternate juror a chance to get back from his meeting. He said his meeting is on Friday and all of us want to move the case along as quickly as possible.

THE COURT: Could you inquire of the jury whether that would create any problems, Judge? I think that would be the most sensible thing to do.

THE COURT: I will.

In view of this delay, I hardly feel in a very solid position to sort of lightly rebuke Mrs. Shields for being late. I think she could in very high dudgeon say you haven't been particularly prompt either. You call us in every morning at 9:30.

MR. EDELBAUM: These things happen in most trials.

THE COURT: One very regrettable matter over which I had no control has occurred here. This jury was on its second week of their term and they are told without being given any guarantees that this is a two-week trial. I am going to try to change that in the future.

MR. EDELBAUM: Off the record.

(Discussion off the record)

(Mr. Moir enters the robing room)

THECOURT: Good morning, Mr. Moir. I have your letter and I have revealed the contents of your request to counsel here. We are allvery sympathetic and we have all agreed if possible to let you take Friday off so that you can attend your board of directors meeting. Now, would you be able to return on Saturday?

MR. MOIR: Yes, I can come back Friday night.

THE COURT: We are prepared to recess completely for Friday rather than risk losing another alternate so that you can discharge your commitment on Friday and I am happy to hear you say you can be back

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here on Saturday.

MR. MOIR: I would appreciate that very much. I will go down Thursday night and I will be back Friday night.

THE COURT: Very well.

MR. MOIR: Thank you. I appreciate it very much.

(Mr. Moir leaves the robing room)

THE COURT: Are there any other matters to explore?

(No response)

THE COURT: Is there anything further?

MR. EDELBAUM: No. It doesn't make me very happy, but it's there. I made a commitment to 150 people to be there Sunday morning and I can't physically go down after Saturday and come back Sunday.

THE COURT: Would it help you if we try to adjourn a little earlier on Saturday? It's a very short flight.

MR. EDELBAUM: I am not talking about that. From what I understand, Mr. Kelsey's examination, direct, is quite protracted.

MR. MC GUIRE: I don't think it is.

MR. EDELBAUM: How short?

MR. MC GUIRE: I would be very seriously surprised if his direct examination took more than a half hour.

MR. EDELBAUM: Just to work all day until 4 o'clock and then go down for the day --

THE COURT: My curiosity tempts me to ask you, are you going to deliver an address?

MR. EDELBAUM: No. Off the record.

(Discussion off the record)

MR. MC GUIRE: Your Honor, I have relayed your instructions to the witness. I believe he understands them. And with the Court's permission, I should like to talk to your Honor briefly without the presence of the defense lawyers with respect to some matters involving Mr. Hellerman's security.

THE COURT: Do you have any objection, gentlemen?

MR. EDELBAUM: No.

MR. GOLDBERG: No.

THE COURT: If I feel there are any matters raised at this conference that should be brought to your attention, it will be done.

(In open court)

(Jury present)

MICHAEL HELLERMAN resumed.

THE COURT: Again I find it necessary to extend my apologies to you for this delay. As I explained to you yesterday, problems occasionally do arise which involve matters of law and regrettably occasionally these problems take some extended time. Please accept my assurance that we were not sleepyheads and we did not have an extended breakfast nor did we spend any more time calling you to the jury box than was abolutely necessary. I feel absolutely confident that you understand the matters I am discussing with you, and so I just trust that you will continue to have forebearance for us and I hope we can rely upon your continued indulgence.

THE CLERK: Mr. Hellerman, I remind you you are still under oath.

CROSS-EXAMINATION CONTINUED

BY MR. GOLDBERG:

Q Mr. Hellerman, you were indicted in connection with the Imperial Investment stock fraud in what month of what year?

A I think November, '69, sir.

Q November of '69 or November of '70?

A '69.

Q Would you accept my representation as to the year?

A Yes, sir.

Q It was in 1970, isn't that so?

A I just didn't remember the year.

Q After you were indicted did you go to see an Assistant United States Attorney by the name of Mr. Morvillo?

A After I was indicted? Yes.

Q Did you hear my question?

A Yes.

Q Did you?

A Yes.

Q And did you promise Mr. Morvillo that you wouldn't commit any more crimes otherthan the Imperial Investment stock fraud?

A No, sir.

Q Did Mr. Morvillo tell you that if you would keep your nose clean or avoid any trouble or not commit any crimes you wouldn't be indicted in the Belmont case?

A No, sir.

Q Did Mr. Morvillo have any discussion with you with respect to whether or not while on bail in the Imperial case you would avoid committing any crimes?

A Yes.

Q And you told Mr. Morvillo, didn't you, after you visited him upon your indictment in connection with Imperial that you would avoid any further infractions of the law, isn't that so?

A Yes.

Q You didn't keep that promise to Mr. Morvillo, isn't that so?

A That's correct.

Q You lied to Mr. Morvillo, isn't that so?

MR. MC GUIRE: Objection.

THE COURT: I will allow it.

A Yes, sir.

Q You knew at the time you made thatpromise to Mr. Morvillo you were then and there, while in his office, involved in further criminal activity on the outside, isn't that so?

A No, absolutely not, sir.

Q But you engaged in criminal conduct promptly upon leaving his office, isn't that so?

A No, sir.

Q. How many months after you made this promise to Mr. Morvillo that you wouldn't engage in any further criminal activity did you engage in another stock swindle?

A A year, a year and a half. Approximately a year.

Q And how many stock swindles did you engage in after the time thatyou left Mr. Morvillo's office?

A Two.

Q And what --

MR. EDELBAUM: I can't hear the witness.

THE WITNESS: Two.

Q What stock swindles were those?

A Computer Microdata and Minute Approved Credit.

THE COURT: Try to keep your voice up, Mr. Hellerman.

Q In connection with the stock swindle involved in Computer Microdata, which I will call Computer, if I may, as a short key word, Computer, did that involve manipulation of stocks?

A Yes, sir.

Q Did thatinvolve telling mistruths to people?

A Yes, sir.

Q Did that involve lying to people with respect to the stock?

A Yes, sir.

Q Did that involve causing loss to people based upon your word?

A Yes, sir.

Q You had no hesitancy in lying and cheating with respect to statements made by you to people --

A Correct, sir.

Q -- in your ques for money, is that correct?

A Correct.

Q Now, in Computer Microdata, how long a period of time were you engaged in that stock manipulation?

A Two, three months, I guess, approximately.

MR. EDELBAUM: Would you ask him to raise his voice? I can't hear him

THE COURT: Repeat it.

A Approximately two or three months.

MR. MC GUIRE: May I suggest, your Honor, that the witness would have less difficulty in making himself heard if Mr. Goldberg stood back a way?

MR. GOLDBERG: I will do so.

Q Now, in those two or three months --

THE COURT: Would it be inconvenient for you to step back a little further so that Mr. Hellerman will be able to target his voice?

MR. GOLDBERG: I will.

Q In connection with Computer Microdata, how many customers or friends of yours did you advise to purchase the stock of Computer?

A Four or five.

Q Did those people lose money?

A Funny, no.

Q What was funny?

A They made money.

Q How about brokers, did they make money?

A I can't answer that question yes or no, Mr. Goldberg.

Q You involved brokers -- withdrawn.

You involved brokers, did you not, in the manipulation of this stock?

A Yes, sir.

Q You encouraged brokers to go and ask their customers to purchase this stock in an effort to create a market, isn't that so?

A No, sir.

Q What was the nature, in broad detail, of that stock fraud involved?

A I asked you before, sir, if you would like me to explain it. I would be glad to explain it.

Q Explain it.

A Customers, people that heard about the stock, went out and bought it from their brokers and I, being in possession of a large quantity of the stock, became an opportunist and jumped on the fact they were buying the stock and I sold the stock at the same time. In Computer Microdata the brokers did not get hurt up to the time the stock was subpoenaed by the SEC. Every broker was paid every dollar that the stock was purchased for.

Q How much money did you make?

A I would say about a quarter of a million dollars.

Q A quarter of a million dollars?

A Yes, sir.

Q In what year was that?

A This year. No, last year.

Q Did you file a tax return for the year 1971?

A That is due in April, sir.

Q No, the tax return was due April 15, 1972?

A The year before. Yes, sir.

Q Did you report these earnings?

A I only earned it last year, '72. This is '73. It is due in April, the tax return.

Q You made this money in 1972?

A Right.

Q You say that you came into possession of a large quantity of Computer stock, is that correct?

A Yes, sir.

Q How did you come into possession of that stock?

A Through the owner of the company and his attorney.

Q Did you tell those people that you would be able to create a market in that stock?

A I made an investment and my investment brought me Computer Microdata stock.

Q Where did you get the money for the investment?

A I borrowed it.

Q What were the circumstances under which the SEC suspended trading in that stock? What was, in other words, the fraudulent manipulation that was practiced in connection with that stock, if any?

MR. MC GUIRE: Objection as to the form.

THE COURT: Sustained.

Q Did you say you participated in a stock fraud known as Computer Microdata?

A Correct, sir.

Q Your activities in connection with that stock were criminal, were they not?

A Yes, sir.

Q Violations of the securities laws and the United States Code, is that correct?

A Yes, sir.

Q Tell us what were those violations?

MR. MC GUIRE: I object to that. It calls for a legal conclusion on the part of the witness.

THE COURT: Sustained.

Q What did you do that you said involved violations of law?

A I sold stock while other people were buying it and I knew they were buying it while I sold it. That is my interpretation, not being an attorney, that that would be a manipulation.

Q You say your interpretation.

A Yes, sir.

Q The United States Attorney's office advised you, did it not, that it viewed your conduct as criminal, isn't that so?

A My attorney advised me, Mr. Broderick.

Q I didn't ask you that. Did you ever have any conversation with the United States Attorney in which they told you that your conduct in connection with Computer was criminal?

A No, sir, absolutely not.

Q Did the United States Attorney's office ever tell you you were under investigation or scrutiny for your conduct in connection with Computer?

A - Absolutely not.

Q But your attorneys told you that, is that right?

A Yes, sir.

Q Now, other than Computer that you say you made a quarter of a million dollars, what other stock?

A Excuse me, Mr. Goldberg. I didn't say I made a quarter of a million dollars. I didn't say I kept a quarter of a million dollars.

Q This was in what year?

A 1972.

Q You didn't give any of that to the defendant Dioguardi, did you?

A No, sir.

Q You haven't seen the defendant Dioguardi, I believe you told us, for well over two years, isn't that so?

A I haven't seen him for well over two years, correct, sir.

Q He didn't direct you on the practice or conduct in connection with the Computer, did he?

A No, sir.

Q Now, other than Computer, I think you told us there was another stock fraud that you were involved in in 1972, is that correct?

A Yes, sir.

Q After you had made the promise to Mr. Morvillo that you wouldn't commit crimes, is that right?

A Yes, sir.

Q And, by the way, when you acted with respect to Computer, was your bail revoked, the bail that you had been out on on the Imperial case?

A No, sir.

Q You weren't ordered to jail because of any dereliction in your bail conditions in the Imperial case because you committed crimes in 1972, were you?

MR. MC GUIRE: I object as to form.

THE COURT: Objection sustained.

Q What other stock fraud were you involved in in the year 1972?

A Minute Approved Credit.

Q And how much money was made by the -- was that a stock manipulation?

A No.

Q Well, I have asked you what other stock were you involved in as a stock fraud. Do you recall that?

A Yes.

Q You said Minute Approved Credit.

A Yes.

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Q How was that trade accomplished?

A I arranged for the sale of the underwriting when I was not licensed to do so.

Q Did you receive any money?

A Yes, sir.

Q How much money?

A $20,000.

Q How much money was made in connection with that stock fraud?

MR. MC GUIRE: I object. By whom?

THE COURT: Sustained.

Q How much money other than the $20,000 did you receive out of that Mini Credit case?

A Not a penny, sir.

Q Do you know Murray Winters?

A Yes, sir.

Q Did he participate with you in any of these two stock deals?

A No, sir.

Q Edward Palermo?

A I know him, but he didn't participate.

Q Kelsey?

A No, sir.

Q Schoengold?

A No, sir.

Q Am I correct that Schoengold acted under your directions in connection with the Belmont stock swindle?

A Yes, sir.

Q And the Imperial stock swindle?

A Yes, sir.

Q Did you ever promise Schoengold that he would receive a certain percentage of the deal for Imperial or Belmont?

A Yes, sure.

Q Did you give it to him?

A I can't answer your question yes or no.

Q Did you give him any percentage of the profits that you made in connection with Belmont or Imperial, as had been promised?

A I still can't answer your question. If you want me to explain, I will explain.

Q Did you ever promise Steve Scheongold any percentage of the profits from Imperial or the Belmont stock deal?

A Yes.

Q Did you ever give him what you promised him? Yes or no.

A I can't answer that yes or no, I am sorry.

Q You gave his wife a mink coat?

A Yes, I did.

Q You helped pay off a portion of his automobile?

A I think I bought him the automobile.

Q You bought him an automobile?

A Yes.

Q And Mrs. Schoengold was not the only person you had bought a mink coat for?

A Correct.

Q Jack Kelsey's wife?

A Sure.

Q Sure? Was Jack Kelsey an individual who took directions from you in connection with the stock fraud of Belmont and Imperial?

A Yes, sir.

Q Did they join with you in any unlawful conduct in connection with Tabby International?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q Did they take any direction from you in connection with their conduct in Tabby International and another stock?

A Yes, sir.

Q Isn't it so that Jack Kelsey received a kickback from the president of Tabby International in the sum of $25,000, if you know?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q Did you ever receive from Jack Kelsey $25,000 that he said was a kickback from the president of Tabby's International?

MR. MC GUIRE: Objection.

THE COURT: Answer the question.

A Yes, sir.

Q You got that money?

A Yes, sir.

Q You knew it was a crime to get that money when you received it?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q Did you know it was unlawful --

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q Under what circumstances did you receive that $25,000?

A When we made the Tabby deal the commission was 30 or 35,000 and Jack Kelsey and I saw Sam Berger, who was close to Allen Gale, close to the principal of Tabby's and we were supposed to get another 30,000 dollars on the completion of the deal, and we went to Johnny and Johnny made sure we would get the 35,000. We had to get a total of 60,000, and when the deal was completed we went to Florida and Jack and I picked up the other $25,000.

Q By Johnny, you mean John Dioguardi?

A Yes.

Q You expect the more you mention John Dioguardi the more is your likelihood of avoidng jail for the crimes you committed?

A No. I am in jail now.

Q What sentence did you receive?

A Two years, sir.

Q What kind of a sentence?

A I was sentenced under Federal Section 4208.

Q Isn't that Section 4208A?

A Section 4208A.

Q Tell the jury what your understanding is of an A sentence.

A My understanding of an A sentence is that it is in the discretion of the parole board, that you are eligible for parole after a very short time of being in prison.

Q . You can be let loose on the public at any time? Is that right?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q You can be freed at the present time?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q Your parole may be granted any time after you commence the service of your sentence short the two years?

2

A Yes, sir.

Q And you are hoping here the more you testify, the more you involve or mention the name Johnny Dioguardi the more is your chance of favorable treatment by the parole board?

A Absolutely not, sir.

Q Do you have any expectation of being prosecuted for your stock manipulation of Computer?

A No, sir. I signed an agreement.

Q I am not asking you what you signed. I am asking you, you admit you committed stock fraud and manipulations in connection with Computer?

A Yes, sir.

Q But you have no expectation that this man, the United States Attorney, will prosecute you for a crime you admit you committed? Is that correct?

A That is correct.

Q A stock that you say you and whoever was with you secured some $250,000 from?

A Correct, sir.

Q You don't charge that against my client, John Dioguardi, do you?

A No, sir.

Q Did anybody in the United States Attorney's office ask you to return or see that any portion of the money that you made from that stock fraud was returned to the public?

(Witness nods his head.)

THE COURT: By nodding your head you are saying yes?

A Yes, sir.

Q What steps have you made to make people whole in the return of the moneys that was swindled from them?

A Well, No. 1, I told you $250,000 was taken in on the deal. I had offered to make restitution of whatever money was available, was left at the time that my attorneys made the deal with the government, which was a hundred thousand dollars.

Q At the time your attorneys made a deal with the government?

A . Right. I offered whatever was left, to make restitution of every penny that I had, which was a hundred thousand dollars at that point.

Will you excuse me one moment, please?

May I ask your Honor a question, please?

MR. GOLDBERG: May we have a side bar conference?

THE COURT: Yes.

(At the side bar with the witness present.)

THE WITNESS: Your Honor, at that point when I had the $100,000 left I received a lot of threats and pressure from people from downtown Mulberry Street, people involved in organized crime, and all of the money, except $12,500 was paid over to them in view of the threats, because the deal had not been made with the government yet, and the only thing I had left was the $12,500, which was put up for restitution in this case.

MR. GOLDBERG: I have a short answer. Can the witness just step away and I will shortcut it. I will take the witness' word and I will not go further in the question of restitution.

THE COURT: Is that satisfactory?

MR. MC GUIRE: Very well.

(In open court.)

Q . Now, I have been asking you about the crimes that you committed.

THE COURT: Do I understand that you are abandoning the line of inquiry concerning restitution?

MR. GOLDBERG: I am.

Q I have been asking you about the acts that you committed after you left Mr. Morvillo's office and had promised him that you would keep your nose clean.

Is that fair enough?

A Yes, sir.

Q And you have told us about Computer and you have told us about Micro Data?

A Correct.

MR. MC GUIRE: Objection. I believe that is one company, Computer Micro Data.

MR. GOLDBERG: One is Computer and the other is Mini Credit. Forgive me.

Q As you see it, your conduct in connection therewith went counter to your promise to Mr. Morvillo?

A Yes, sir.

Q But you don't expect that with respect to the conduct that you performed in either of those cases that you are going to be subjecte to any prosecution by this gentleman sitting to my right? Isn'tthat so?

A Yes, sir. That is correct.

Q Am I correct?

A Yes, you are correct.

Q You have told us about your conduct in connection with Belmont Franchising. Did you engage in any stock manipulation with respect to a company known as Automated Information Company? If I got the word wrong or one particular descriptive word, forgive me.

A I can't answer that question yes or no again.

Q Was the stock of Automated Information manipulated?

A Yes.

Q Did you participate in the manipulation of that?

A I can't answer that yes or no, sir. I will explain it if you like.

Q Did you further the manipulation or fraudulent practice engaged in in connection with Automated Information?

A I still can't answer yes or no, but I will be glad to explain it if you would like me to explain it, Mr. Goldberg.

Q Was the stock of Automated Information manipulated?

A Yes.

Q Did you participate in that manipulation? Yes or no?

MR. MC GUIRE: Objection as asked and answered.

THE COURT: Sustained.

Q You say the stock of Automated Information was manipulated? Is that correct?

A Yes, sir.

Q When was it manipulated? Give me the period of time?

A A year and a half ago approximately to the best of my recollection; about August of last year.

Q August of last year would be 1971?

A Yes.

Q August 1971?

A Yes.

Q That was after you left Mr. Morvillo's office?

A Right.

Q Did you have any role in that stock manipulation?

A Again, sir, I can't answer. If you would like me to explain, I will. I can't answer that yes or no.

THE COURT: The witness has repeatedly said he can't answer your question as it is phrased by yes or no.

MR. GOLDBERG: I will try to reframe the question so I can get an answer yes or no, if I may.

Q Do you know a stock called Automated Information?

A Yes, sir.

MR. EDELBAUM: May I ask Mr. Goldberg to raise his voice.

Q Do you know a stock called Automated Information?

A Yes, sir.

Q Was that stock manipulated?

A Yes, sir.

Q Did you get any proceeds out of that manipulation?

A No, sir.

Q How was that stock manipulated to your knowledge?

A People were told to buy the stock.

Q Who told them to buy the stock?

A Murray Taylor, myself, other people.

Q Murray Taylor told them to buy the stock?

A Yes.

Q Was Murray Taylor a participant with you in the stock fraud of Imperial Investment?

MR. MC GUIRE: Objection on the ground stated yesterday.

THE COURT: Objection sustained.

Q Was Murray Taylor a participant with you in the Belmont Franchising?

MR. MC GUIRE: Objection.

THE COURT: Sustained. Did you speak of Belmont?

MR. GOLDBERG: I said Belmont.

MR. MC GUIRE: I withdraw the objection.

Q Did you ever have any contact with Murray Taylor in connection with a stock known as Belmont Franchising?

A Yes, sir.

Q Did you have any discussions with Murray Taylor with respect to the manipulation of that stock?

A No, sir.

Q Were you ever introduced to George Drykerman?

A Yes, sir.

Q Who intrdouced you to George Drykerman?

A Murray Taylor.

Q Did Murray Taylor tell you that George Drykerman wanted that stock manipulated?

A No, sir.

Q Did you tell George Drykerman you could get that stock manipulated?

A No.

Q What discussions did you have with respect to the trading of that stock?

MR. MC GUIRE: Could we have a time and place?

A You asked me what discussion I had with George Drykerman. The discussion I had with him was about selling the stock on the original issue, not about manipulating the stock or any stock fraud or anything like that, sir.

Q But there came a time in February when you decided to manipulate the stock?

A Yes, but it had nothing to do with the original conversation with George Drykerman.

Q I move into February of 1970.

A Yes.

Q You decided to manipulate that stock?

A Yes.

Q And in connection with the manipulation of that stock you told a number of people untruths?

A Yes, sir.

Q You lied to people?

A Yes, sir.

t4/3

Q In the quest for money the truth was no hindrance?

A Yes, sir.

Q Where money was concerned you would lie and cheat?

A Yes, sir.

Q Now, tell us how the stock of Automated Informatio was manipulated? Explain.

A The stock came out --

THE COURT: Keep your voice up.

A The stock came out. I think there was 30 or 35,000 shares of stock at a dollar, and the stock was sold to the public. I myself advanced money to buy about 16 or 17,000 shares of the stock, and at thatpoint Murray Taylor and Irwin Lane and a group of other people.

Q Did the defendant Dioguardi?

A No.

Q Yes?

A And the stock went to $5, and the reason that when you asked me before, sir, if I had manipulated that stock, and the reason, I believe, Automated Information is written in my deal with the government is that at that point I had told my attorneys and the United States Attorney that Automated Information was going on and I was sort of, say, watching it.

Q For the government?

A For the government and my attorneys, that I would not get involved, I didn't want to get into any more trouble at that point.

Q And you were reporting to the government what was taking place with respect to Automated by Murray Taylor and Irwin Lane?

A Correct.

Q While you were reporting these things to the government as an informer -- correct --

A Go ahead. Yes, sir.

Q -- you were committing other crimes, weren't you?

A No, sir.

Q What month was this that you started to report?

A No, Mr. Goldberg, you got to put everything in right order.

Q I have the right order -- withdrawn.

MR. GOLDBERG: Your Honor, I didn't ask a question that calls for a speech.

THE COURT: Please, I don't want any colloquy. Don't engage in any colloquy. Ask your questions in the simplest possible form that you can construct them, and please slow your pace up.

Q What month and what year did you go to the United States Attorney's office and advise them of your conduct in connected with Autmated or the conduct of Murray Taylor in connection with Automated?

A I would say in connection with Automated was July of -- a year ago July.

Q July '72 or '71?

A July '71 when Automated was -- August was a year --

Q July of '71?

A Yes, sir.

Q Do you remember yesterday I asked you about those Bahamian banks or bank?

A Yes, sir.

Q I asked you whether you had participated in the presentation to a Bahamian bank of altered or fraudulent checks?

A Yes.

Q Did you participate in it?

A I told you I knew about it, but I did not present checks to the bank and I didn't know the amounts or anything like that, sir.

Q Did you participate in the deal, in the planning of it?

A Yes, sir.

Q When was that?

A I would say from around April, May or June, something like that.

Q Of this past year?

A No, right before the first Imperial trial; the year before the first Imperial trial.

Q That is April or May 1971?

A Right before the first Imperial trial.

Q After you had been to Mr. Morvillo's office?

A Yes.

Q And you sat in on the planning of that fraudulent scheme in connection with the Bahamian Bank? Isn't that so?

MR. MC GUIRE: Objection as to form.

THE COURT: Sustained.

Q Did you sit in with anybody while there was planned a fraudulent scheme with respect to this Bahamian bank?

A Yes, sir.

Q You knew that a crime was being planned?

A Yes.

Q And the plan was to take an $11 check and alter it to read $95,000?

A I don't know where you get the figure 95,000.

Q What figure do you have?

A I don't have a figure.

Q Is it in the high thousands?

A I don't know the figure, Mr. Goldberg. I can't give an answer to that.

Q Is it greatly in excess of $11?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q Was there any discussion between you and any other person as to how much money you could make if the scheme succeeded?

A Yes.

Q How much?

A Total?

Q Total.

A It could be up to a million dollars.

Q You sat in on the planning of a million dollar scheme on a Bahamian bank?

MR. MC GUIRE: I object to the form.

THE COURT: Sustained.

Q You told us this plan if it succeeded could have returned a million dollars?

A Yes, sir.

Q Tell the jury what that practice was?

A I don't understand what you mean by practice.

Q What was the scheme? Explain.

A Would you like me to mention every name?

Q You can do whatever you want by way of explanation, subject to the Court's approval.

A Somebody by the name of Larry -- I don't know his last name -- I think he lives in the Bronx -- had come to an attorney friend of mine, came to Marty Roth.

Q Who is Marty Roth?

A An attorney -- and told him that he had a scheme or plan or whatever you want to call it. I think the name of the company was Peerless Liquors, one of the large major distributing companies, liquor distributing company, and a banker who he used to know had given him a $12 or $13 check of the company that had actually cleared.

Q This was a bona fide check, this $12 or $13 check?

A I presume so, and they made photostats of the check and then they printed the checks to look identical to the bank check that it was in, and then they took the bank checks -- not the bank checks -- the check they printed to look like the check that Peerless would normally put in their bank, and they forged the signature -- the signature was on it -- and made the checks out -- I don't know what the amounts were -- and tried to clear them through a Bahamian bank, but the scheme never worked.

Q You didn't make any money?

A No, sir.

Q Were the checks actually presented to the Bahamian bank?

A I was not there.

MR. MC GUIRE: Objection to further pursuance of this line of cross examination.

THE COURT: I can't hear you.

MR.MC GUIRE: I object to any further continuation to this line of cross examination.

THE COURT: Sustained.

Q Do you have any expectation that you are going to be prosecuted by the United States for any conduct of yours in connection with that scheme?

MR. MC GUIRE: Objection. No foundation.

THE COURT: Sustained.

Q Did you commit any crimes, did you take any action to further the scheme?

A Yes.

Q You located the person, did you not, who had counterfeited the checks, a man by the name of Marks?

A Yes, sir.

Q You are the man who found the person? Who found the counterfeiter?

A I introduced him to Irwin Lane.

Q And you asked this man to assist in this scheme, did you not?

A Not assist in the scheme, no.

Q To help?

A No. I asked him to print checks. He didn't know what he was printing the checks for.

Q You knew what he was printing the checks for, didn't you, Mr. Hellerman?

A Yes, 100 per cent.

Q And you stood to make money were this venture to succeed?

A Yes, sir.

Q There is no doubt in your mind about the kind of conduct you committed in this scheme?

A No. It was very wrong.

Q It was very wrong?

A Yes.

Q You have no expectation as you sit there that because of your very wrong conduct this man to my right is going to prosecute you for that?

MR. MC GUIRE: I object. I don't think we need personal references here.

MR. GOLDBERG: Forgive me.

THE COURT: You made personal references time and time again. You know better. This man happens to be an Assistant United States Attorney. I wish you would refrain from that sort of ad hominem record.

Q The United States Attorney's office you have no expectation is going to prosecute you or take any action against you whatsoever?

A You know that is the agreement.

Q That is he agreement?

A You have a written copy of the agreement. I signed an agreement.

Q Tell us, if you will --

MR. EDELBAUM: Your Honor, may we approach the side bar?

(At the side bar)

MR. EDELBAUM: I understand, unless I am wrong, Mr. McGuire, that Mr. Steven Schoengold will --

THE COURT: I can't hear you.

MR. EDELBAUM: I may be wrong but I have been informed that Mr. Steven Schoengold may probably well be a witness here. Is that correct, Mr. McGuire?

MR. MC GUIRE: It's a distinct possibility.

MR. EDELBAUM: His brother has entered the courtroom. I don't believe his brother should be in the courtroom while Mr. Hellerman is testifying because it may well be that Schoengold sent him here to find out what was happening, and to get any information as to what Schoengold was going to testify to. I would ask to have any government witnesses for the government excluded.

THE COURT: I think all potential witnesses ought to be excluded at the earliest possible time. I was surprised no such application was made and so I just didn't address myself to it.

MR. EDELBAUM: Since I have been alerted and since he is the only man with a beard who is the brother of Mr. Steven Schoenboli, could we have it privately done that he leave the courtroom so there would be no possibility as to him reporting back as to what is happening here is Schoengold is a potential witness.

MR. MC GUIRE: I have absolutely no objection to that, your Honor. I have taken every precaution I know how to take to see that the witnesses have had no contact with one another.

MR. EDELBAUM: If Rudy could just walk over without making it obvious and just ask --

THE COURT: First would you please point out who Schoengold's brother is?

MR. EDELBAUM: I will find out accurately, sir.

MR. GOLDBERG: The fellow with the beard sitting in the row near the back on the right side of your Honor.

THE COURT: I see one man with a beard.

MR. MC GUIRE: He is sitting right next to the marshal.

I don't see any way of doing this, your Honor, unobtrusively, without calling a recess. Might I suggest that that be done?

(In open court)

THE COURT: We will have a brief recess, ladies and gentlemen.

(Recess)

BY MR. GOLDBERG:

Q Now, other than the Bahamian Bank, laying that aside, did you participate in any other scheme to submit any fraudulent check to any other bank after the time that you told Mr. Morvillo you would keep your nose clean or you wouldn't commit crimes, that is, the United Merchants Bank?

A I don't know what you are talking about, Mr. Goldberg.

Q Did you submit or participate with any other person in the submission of fraudulent checks to any other bank besides the Bahamian Bank?

A No to my recollection, sir.

Q Did you ever hear of the name Ted Goldberg?

A Yes.

Q Was that a name used by you in furtherance of a criminal scheme?

A No.

Q Was that a name used by one of your confederates in a scheme in which you participated?

A No.

Q What does the name Ted Goldberg mean to you?

A It is an alias Marty Roth took for his own protection with the government.

Q In connection with a fraudulent practice?

MR. MC GUIRE: Objettion as to other people's fraudulent practices.

THE COURT: Sustained.

Q Were you a participant with Marty Roth in any fraudulent practice?

A Globus stock.

Q That is a stock fraud, right?

A Right. It's on the paper.

Q It is another one of your stock frauds, right?

A Yes.

Q There is no expectation that the United States Attorney's office or the U. S. Government is going to prosecute you for that, is that right?

A Right, Mr. Goldberg.

THE COURT: I can't hear you.

THE WITNESS: Yes. I answered the question yes.

Q In addition, the U. S. Government is going to do its best to see that no other government prosecutes you, isn't that right?

A Yes, sir.

Q You are going to be insulated from prosecution not only by the government but by any state or local prosecutor, isn't that so?

MR. MC GUIRE: Idon't think we need this. It is argumentative question. I object.

THE COURT: Sustained.

Q. Do you have any expectation that the United States Government will turn overthe information relative to any of these incidents about which we have spoken to any other prosecutor?

A Mr. Goldberg, I don't expect to be prosecuted for any crime I committed in the past if it's listed on the paper or not. I do not expect to be prosecuted for any of those crimes.

Q You do not want to go to jail, is that right?

A I am in jail.

Q You want to get out as soon as possible, is that right?

A Yes, sir.

Q And the A sentence affords you the best vehicle for getting out as soon as possible, isn't that what you understand?

A It is up to the parole board whether they grand me parole.

Q Did your lawyer or the United States Attorney explain to you that you could have gotten a two-year sentence?

A I got a two-year sentence.

Q Straight or one which was an A sentence and that by getting the A sentence you got a better deal?

MR. MC GUIRE: I object to this, your Honor.

THE COURT: Sustained.

Q Did you understand --

THE COURT: Just a moment.

MR. MC GUIRE: May I ask for an instruction to the jury on the meaning of this statutory provision whcih has been the subject of so much discussion here?

MR. GOLDBERG: I think an instruction should be asked at the side bar because I might want to be heard on that but in this instance --

THE COURT: We'll have a side bar conference now.

(At the side bar)

THE COURT: First let me suggest that you are getting into an area which might put you on notice to anticipate rehabilitation on redirect on some of these issues. It is my understanding that the parole board is not under the influence of the Court, it is not under the influence of the United States Attorney, that they act as an independent body and that they make their decision based upon facts which are presented to them. You are trying to give this jury an inference that the parole board will necessarily grant this prisoner parole.

MR. GOLDBERG: If I have done that --

THE COURT: That's a very unfair inference and if you continue this line I will allow the government to develop the background of parole.

You are also giving this jury the inference that a judge is bound by any agreement that the government entered into.

MR. GOLDBERG: Should I answer that?

THE COURT: Sure, I want you to answer that.

MR. GOLDBERG: If I have given an unfavorable inference --

THE COURT: I think you are going far afield.

MR. GOLDBERG: I will desist. May I ask this question with propriety? Isn't the expectation by testifying hre today that he will get himself an early release from prison far short of two years? That is his expectation.

THE COURT: He has already answered that. It is my recollection that the question has been asked and the question has been answered.

MR. MC GUIRE: In fairness to Mr. Goldberg, I don't think the question has been asked in precisely that form.

MR. GOLDBERG: After that question is asked, I will desist. If I have given an unfair impression, I will apologize and not go further on that area.

MR. MC GUIRE: It seems clear to me the purpose of this examination has been to create the innuendo your Honor has suggested. For purposes of redirect I will have to consider that matter very carefully but I would ask now for a curative instruction to dispel the impression that I think has already been created.

THE COURT: Let's discuss the instruction you would have the Court give.

MR. GOLDBERG: May I ask this? I was in the Department of Justice. Can he not count on the fact the United States Attorney might write a letter on his behalf to the parole board? Doesn't that give a help on parole?

THE COURT: You are getting into collateral issues. In 21 years I have never written to the parole board.

MR. GOLDBERG I have never asked him --

THE COURT: I am merely saying you are opening up doors that cast shadows that can be very, very prejudicial and you are inviting that.

MR. GOLDBERG: Your Honor, the government has the ability to write a letter to the parole board on his behalf.

THE COURT: Anybody can write a letter and I suppose in due course letters are written.

MR. GOLDBERG: Could I ask him if that is his expectation?

MR. MC GUIRE: I can make a representation, and this is what is concerning me, the government has not made any representation, express or implied, that it will or even that it might make any communication of any kind whatsoever to the parole board. Indeed, it is my understanding that this witness' attorneys do not expect a reply for an early parole nor do they expect to make an application for a reduction of sentence.

MR. GOLDBERG: Judge, whether the letter is going to be written is entirely immaterial.

THE COURT: If you want to open the door, I will leave the door wide open for the United States Attorney to ride through with whatever is necessary to dispel any unfair or inaccurate inference.

MR. GOLDBERG: If you tell me you feel it is unfair, that is he end of it.

THE COURT: I not only think it is unfair, I think you are opening collateral issues, you are inviting comment which is completely inaccurate.

MR. GOLDBERG: I will desist.

THE COURT: While I am on this point, I think your rapid fire cross-examination must be slowed down. You are not giving the witness an opportunity to think about his answers, you are not giving him an opportunity to answer them. Your questions are being fudged by having them so quickly spaced that there is no time to distinguish between one question and another question.

And I would also ask you to desist from the practice of using cross-examination as a means of summing up. I want you to adhere to that carefully. I know that this is a fine trial technique but I am not going to tolerate it any longer. This is cross-examination and purely cross-examination. I will allow it for no other purpose.

MR. GOLDBERG: I will do my best.

THE COURT: Can we eliminate the need of calling this matter any further to the attention of the jury? If you feel there is any need for a precautionary instruction, I will do that at the end of the case.

MR. MC GUIRE: Very well.

THE COURT: I would not like to labor or

emphasize this matter any further now.

MR. MC GUIRE: Very well.

(In open court)

BY MR. GOLDBERG:

Q You told us, I believe, that the name Ted Goldberg is familiar to you?

A Yes, sir.

Q And Ted Goldberg you told us was an alias used --

A Yes, sir.

Q -- by Marty Roth?

A Yes, sir.

Q And that was in connection with a stock fraud known as Globus, correct?

A Yes.

Q When did that stock fraud take place?

A I would say October or November of -- you said the indictment was in '70, the Imperial indictment, Mr. Goldberg?

Q November of 1969 is my representation.

A I thought you said '70.

MR. MC GUIRE: I beg your pardon. A few minutes ago the representation was --

MR. GOLDBERG: You are right. November, 1970.

THE COURT: Are we now reasonably certain of that date? Is it '69 or '70?

MR. MC GUIRE: It is 1970, your Honor.

MR. GOLDBERG: November, 1970.

MR. MC GUIRE: I can't swear to the date, your Honor, but I can tell you the year, 1970.

Q It was the end of the year, is that correct?

A November -- no, Globus then was in October of 1970.

Q You mean right before you were indicted?

A Yes.

Q Did it end in October of 1970 or did it continue into 1971?

MR. MC GUIRE: Objection as to form. I don't know what he is talking about.

MR. GOLDBERG: Withdrawn.

Q The manipulation of the stock of Globus.

A It ended before the indictment of Imperial, sir.

Q Have you been indicted in connection with any of your conduct in connection with the manipulation of that stock?

A No, sir.

Q Did you participate in the manipulation of the Globus stock?

A Yes, sir.

Q Were members of the public damaged by the manipulation, if you know, of that stock?

A As far as I know, no, sir.

Q How about brokers?

A Yes, sir.

Q They suffered, am I not correct, severe losses?

A It depends --

MR. MC GUIRE: I will object to that question.

THE COURT: Sustained.

Q Was there a bust-out scheme such as you outlined to Mr. McGuire in connection with Belmond that you had planned, was that completed or used with respect to Globus, the bust-out scheme? Was there a bust-out scheme used?

A Yes.

Q And it succeeded?

A No.

Q Did the bust-out scheme cause, as a result of its use, losses to --

MR. MC GUIRE: I will object to that. The question of causation is sometimes a complicated question, your Honor. I think the question could be better framed.

MR. GOLDBERG: All right, I will do so.

Q What was the bust-out scheme in Globus in which you participated?

A Just as I outlined --

Q Don't summarize. Can you tell me what it was?

A Yes, I am going to tell you. In Globus we went to the Bahamas, we opened accounts, we put stock at the accounts to be sold into the market, we had a firm in the sheets, a broker's firm in the sheets, ready to buy the stock when the stock was sold from the Bahamas. If the deal had gone through or would have been successful, the money would have gone to the Bahamas and I would have ended up with the money in the Bahamas and the brokerage houses would have been stuck in New York.

Q For how much money?

A Depending on how much stock was sold.

Q Was it over a million dollars?

A What do you mean was it over a million dollars?

Q Was the projected profit from this bust-out over a million dollars?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q How much money was involved in this bust-out by way of potential profit?

MR. MC GUIRE: Asked and answered.

MR. GOLDBERG: I haven't gotten an answer yet.

THE COURT: Mr. Goldberg said he forgot the answer.

A It depends how much stock was sold.

Q How much stock did you have to sell?

A We put, I believe, around 60,000 shares in the

Bahamas.

Q To be sold at what price?

A Approximately five dollars a share.

Q What does that arithmetic come to?

A $300,000.

Q Who was in the Bahamas with you?

A Joe Bald, Murray Winters, myself.

Q Murray Winters is a lawyer, is that correct?

A That's correct.

Q Did he take direction from you in connection with that stock fraud?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q Did you give him any commands or directions in connection with the manipulation of the stock known as Globus?

A Absolutely not.

Q Did you give him any directions or commands with respect to a stock known as Belmont?

A Now --

Q In other words, did you tell him what to do to help the venture succeed?

A Are you asking the same question leaving out a word, Mr. Goldberg, on purpose? I am not trying to be funny. You asked in the last question if there was a stock fraud. My answer was no, because Mr. Winters did not participate in any stock fraud. You now asked a question did I give him any direction in Belmont. The answer to that is yes but not as far as a stock fraud. I don't want you to confuse me in the way you ask the question.

Q What was Murray Winter's role in connection with Globus?

A Strictly to act as my attorney and open an account, not knowing what I was going to do with the account in the Bahamas, strictly like I would retain you or any other attorney.

Q Did you choose the Bahamas for any particular reason?

A The bank secrecy laws, yes.

Q When you say the bank secrecy laws, do I understand by going to the Bahamas you hoped to hide your involvement?

A Yes, sir.

Q You counted on the fact there wouldn't be a witness against you from the Bahamas who could testify?

A That wasn't my main thought. My main thought was nobody could find the money.

Q Now, isn't it true that in connection with

Belmont Franchising Murray Winters opened up a number of nominee accounts, if you know?

MR. MC GUIRE: I will object to questions directed to the participation of others in criminal schemes or non-criminal schemes, your Honor. The basis --

MR. GOLDBERG: I am talking about Belmont, your Honor.

THE COURT: I will allow it.

MR. GOLDBERG: I object to his continued --

THE COURT: I will allow Mr. McGuire to indicate the basis for his objection.

MR. MC GUIRE: The basis for my objection, your Honor, is that my understanding of the law is that Mr. Goldberg can inquire as to this witness' participation in crimes.

MR. GOLDBERG: May I be heard?

MR. MC GUIRE: The participation of others is another matter, if any.

MR. GOLDBERG: May I be heard?

THE COURT: You may.

MR. GOLDBERG: To the extent that I asked the witness what he knows of another person's role in a criminal enterprise, I make him my witness, it is true.

THE COURT: You what?

MR. GOLDBERG: I make him my witness in that regard.

THE COURT: That is not the objection tendered by Mr. McGuire.

The objection is sustained.

Q Do you know anybody by the name of Julius Weintraub?

A Yes.

Q Do you know anybody by the name of Jacob Landau?

A I don't know anybody by the name, of Jacob Landau, no.

Q Is that an alias, Jacob Landau?

A Yes, it is.

Q Did you participate in any fraudulent scheme whereby the name of Jacob Landau was used as an alias?

A Did I participate in a fraudulent -- I can't answer that yes or no, Mr. Goldberg. I would be glad to explain it if you would allow me.

Q Did you commit a crime in connection with that?

A No, sir.

Q When you talked about a deal with the government -- do you recall using that word?

A Yes, sir.

Q Did you secure or is it your understanding you won't be prosecuted in connection with anything concerned with Jacob Landau or Julius Weintraub?

A Yes, sir.

Q What is Jacob Landau-Julius Weintraub, what is that case?

A Marty Roth arranged a loan and we thought it was a loan and the bank that we got the loan from ended up giving us a fraudulent check.

Q The bank gave you a fraudulent check?

A Yes, and it is my understanding that bank was subsequently -- the man that gave it to us was indicted and convicted not on that but for doing it with a lot of people and that's how -- that's why when you asked me if I committed a crime in that, the answer to that question is no, I did not commit a crime.

Q Did you ask your lawyer to secure a commitment from the government you wouldn't be prosecuted for any crime in connection with Julius Weintraub-Jacob Landau?

MR. MC GUIRE: I object to the question directed towards consultation between this witness and his lawyer.

THE COURT: Objection sustained.

Q Did you have any discussions yourself with the United States Attorney relating to any commitment by the government that you wouldn't be prosecuted for anything or act committed by you in connection with the

Julius Weintraub-Jacob Landau case?

A No, sir.

MR. GOLDBERG: May this document be marked for identification?

(Defendant Dioguardi Exhibit B was marked for identification)

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MR. MC GUIRE: Pursuant to the usual practic , your Honor, I ask for an instruction to the jury that this document has been furnished to Mr. Goldberg by the government pursuant to statute.

THE COURT: That is correct.

Q Showing you Defendant Dioguardi's Exhibit B for identification, I direct your attention to the item marked C. Without reading it aloud, look at it yourself and read the paragraph above it, if you will.

A C?

Q C.

A It says --

THE COURT: Don't. Do you see C?

THE WITNESS: I see C and he told me to read it.

THE COURT: Read it to yourself.

THE WITNESS: I read it.

Q Isn't it so that there were discussions between you, the United States Attorney's office and your attorneys with respect to insulating you from any liability based on your conduct in connection with Julius Weintraub or Jacob Landau?

A I have to answer that question absolutely no the way you asked me, Mr. Goldberg.

Q Was there any discussion in the presence of the United States Attorney's office between yourself and/or your attorneys --

A And/or my attorneys. Now you put the word "or" in. Before you didn't. Yes.

Q -- relating to your possible involvement in the Julius Weintraub-Jacob Landau case?

A Yes, sir.

Q And you learned, did you not, that the government had committed itself not to take any action against you with respect to the Julius Weintraub or Jacob Landau case, isn't that so?

A Yes. I answered that before.

Q Correct?

A Yes, sir.

Q And further, you secured a commitment, did you not, from the government --

MR. MC GUIRE: Objection.

MR. GOLDBERG: Before my question is asked.

Q Did you secure a commitment from the government that there would be no prosecution of you at the state or local level?

MR. MC GUIRE: Objection.

THE COURT: May I see you at the side bar?

(At the side bar)

MR. MC GUIRE: Mr. Goldberg in cross-examination has attempted to outline part but not all of an agreement between the witness and the United States At this point I believe that the government is entitled to introduce the entire agreement into evidence.

MR. GOLDBERG: Can I say that the first mention of the deal or written agreement was Hellerman --

THE COURT: Mr. Goldberg, I don't want you to become so enchanted with your own thoughts that you refuse to see the other side of the coin. Now, the area has been explained. Now, this agreement that you are inquiring about is a conditional agreement and it is couched in terms and you are by your questions leaving the impression of a firm commitment without more and I think that is not an accurate view that can be taken of this agreement, and I think if you open up the door I am going to allow the United States Attorney to expose the entire agreement. You can't take and extrapolate and fragment pieces because you like it because it serves your purpose without the entire agreement being revealed.

MR. GOLDBERG: I will desist, although --

THE COURT: Again and again we get into this area where you start on a road. Whether you have thought about it or not is not important. Then when you are confronted with problems, and we have tried to anticipate all of these problems to the best of our ability, but when you are confronted with these problems you attempt to say, "I am not going to do any more about it." But in the meantime you are possibly affecting this jury with prejudice that is not of a legal variety. I am perfectly willing to have you explore this agreement to your heart's content, but you can't foreclose the government from its opportunity to do the same thing.

MR. EDELBAUM: I have a position here, too.

THE COURT: I know you do.

MR. EDELBAUM: My position at this time, in view of what I see is happening here, I respectfully move for a severance for the defendant Louis Ostrer.

THE COURT: I am not going to grant that. I ruled upon that. I am not going to pass upon this association of counsel for respective defendants. It becomes more interesting as the days go by. I wonder how much of this is accident or oth[illegible]ise. It reminds me of the story of the rooster.

MR. EDELBAUM: If you care to put me under oath --

THE COURT: I am not going to put you under oath.

MR. EDELBAUM: -- I would be very happy to tell you I have no design. I try my case my way and this is the first time in my life that I have ever appeared in a courtroom with Mr. Goldberg in any case. I am not aware of his tactics, I am not aware of anything. I might say that I have my own thoughts of certain things that he is doing which I disagree with entirely, and just because I do is no reason for your Honor to tell me the story of the rooster or anything else.

THE COURT: I have told it, be that as it may, and I have told it on the record and that is whre it is going to stand.

MR. EDELBAUM: It will speak for itself.

THECOURT: I am not prepared to make any characterization of your technique as a tactic but I would certainly suggest at this point that you proceed warily. None of the areas you are embarking upon by way of interrogation have not been covered in some fashion at some time in conference. I tell you again, if you aer going to open the door I am going to let the United States Attorney do whatever is legally appropriate to rehabilitate this witness and put this agreement in proper focus. I would suggest -- you make your own choice -- that you withdraw the last question.

MR. GOLDBERG:. There will be no discussion about the agreement. I did not inject it into the case.

THE COURT: You marked it for identification.

MR. GOLDBERG: He kept saying, "You have the agreement." He said it, I didn't.

THE COURT: You took it up. If you want to take it up and talk about the agreement you are going to talk about it in toto. You are not going to speak about absolute, firm commitments.

MR. GOLDBERG: I will tell you, your Honor-- let me ask your Honor, if I may --

THE COURT: Sure.

MR. GOLDBERG: The government has furnished me with this document which recites some six cases. I won't touch on those six av more. The government has also furnished me with a list of some ten items involving crimes committed by him incorporated in a letter Mr. Wing sent to Mr. McGuire. This doesn't appear in the agreement. But can I not ask him whether he expects to be prosecuted for any of these other crimes, period?

THE COURT: I certainly think that is appropriate.

MR. GOLDBERG: Then I will drop it.

THE COURT: Is there any objection?

MR. MC GUIRE: I haven't made any objection.

MR. EDELBAUM: I resent your attributing to me we have a scheme or a plan.

MR. GOLDBERG: That is true.

MR. EDELBAUM: I don't get along with Mr. Goldberg.

MR. GOLDBERG: We don't get along. I will follow your instructions.

THE COURT: If you don't follow my instructions, Mr. Goldberg, I will undertake to tell you this, that I will take whatever steps I need to see that my instructions arecomplied with. I have rarely had occasion to get into the sanction area and I hope this is not my first time in 21 years.

MR. GOLDBERG: I have never been --

THE COURT: When I repeatedly give the instructions to you I will expect them to be observed. There is a certain amount of latitude involved. I also indicate I can understand i the zeal of advocacy there are some transgressions. None of us are perfect, and I am prepared to state th : for the record, but I wish you would think very carefully about where you go. You can't have it both ways.

MR. GOLDBERG: I want to say this to you, when you talk of sanctions, I have never shown disrespect for your Honor and no judge -- one judge has --

THE COURT: By sanctions I mean it is not merely a matter of disrespect. It is a matter of not complying with instructions of the Court, be they right or be they wrong.

MR. GOLDBERG: I thought once he had cutely thrown out "agreement, you got the deal."

THE COURT: You missed the point. All I am saying is that by your questions you are implanting in the jury's mind that thsi is an absolute commitment without more, and that's not what the agreement is all about.

MR. GOLDBERG: I will simply ask him for his expectation --

THE COURT: Do you understand what I am saying?

MR. GOLDBERG: Yes. I would ask him for his expectation and not what was agreed to by the government.

MR. EDELBAUM: One last comment. I was very angry yesterday with Mr. Goldberg at the end of our conference concerning the excusing of juror No. 3, and I told him in very forceful terms my reason. In my opinion, there was no basis for him being excused.

MR. GOLDBERG: I viewed it otherwise.

MR. EDELBAUM: And to have your Honor say that because I had that opinion we were working some kind of a -- I think is quite unfair.

THE COURT: Again you are reacting too much. The story of the rooster has nothing to do withany plan to accomplish the result whether it is planned or unplanned. That is the result that I see. You are both running in different directions. I am not going to run after each of you separately.

MR. EDELBAUM: I am not going to run after Mr.Goldberg. I only have a commitment to one client.

MR. GOLDBERG: I will make it pretty clear to Mr. Edelbaum. I am not going to be put in a corner and be pounced upon by everybody. I will take your Honor's direction. I have tried many cases. I have tried the case with these people as witnesses before. I got a very good result and favorable treatment from the judge. I am not going to operate under threat.

THE COURT: Iwon't give you favorable or unfavorable treatment. I will give you the kind of treatment you deserve based upon the law and nothing else.

MR. GOLDBERG: I have to take it but I won't be coerced or intimidated. I will follow what you tell me to do.

THE COURT: Let's go ahead. Let's see if we can go straight down the middle here.

(In open court)

MR. GOLDBERG: I withdraw the last question.

BY MR. GOLDBERG:

Q Mr. Hellerman, in addition to the stocks known as Imperial, Belmont, Globus, Automated, Minute Credit, was there any other stock fraud in which you participated as a principal?

A Belmont.

Q I mentioned Belmont.

A Tabby's.

Q Tabby's?

(Witness nods)

Q Do you have any expectation of being prosecuted?

A Mr. Goldberg, I told you I don't have any expectation of being prosecuted on any past crimes that I committed from the date I made the understanding -- my attorneys made the understanding with the government. I answered that for you.

Q Other than Tabby's being added to the list that I have just outlined or itemized for you, is there any other stock fraud in which you participated?

A At Your Service Leasing.

Q At Your Service Leasing?

A Right.

Q In fact, you were indicted in connection with At Your Service Leasing?

A Correct.

MR. MC GUIRE: Objection as to form only there. The word Mr. Goldberg used is technically incorrect.

Q Was there an information filed against you?

A Yes.

Q Did you plead to that information?

A Yes, sir.

Q Were you sentenced in connection with that information?

A Yes, sir.

Q What sentence did you receive?

A I believe the sentence was suspended on that charge.

Q You got no time?

A I was given two years on charge one which was the Imperial and the sentence was suspended on charge 2 and charge 3, which I don't think I was sentenced on it. I don't really have an understanding of it.

Q You mean Belmont was suspended when you were sentenced on Imperial, is that what you mean?

A Yes. When I went before Judge Lasker I could have gotten six years and $30,000 fines, and Judge Lasker sentenced me on Imperial to two years and he suspended the sentence -- I believe this is correct -- he suspended sentencing me on Belmont and at Your Service Leasing.

Q In connection with Imperial, you were indicted in some 72 counts, is that correct?

A Yes, sir.

Q Charging 72 separate violations of law?

A Yes, sir.

Q You were guilty of each of those violations of law, weren't you?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q How many counts of the Imperial indictment did you plead guilty to?

A One count.

Q What happened to the 71 other counts?

A They were dismissed in satisfaction of the plea.

Q In Belmont you were indicted in a 40-count indictment, is that correct?

A Yes, sir.

Q You pleaded guilty, you told us?

A Yes, sir.

Q And how many counts of the Belmont indictment did you plead guilty to?

A One count, sir.

Q What happened to the 39 remaining counts?

A I think they were dismissed when the judge sentenced me.

Q Did you look at the indictment before you pleaded guilty?

A I read it.

Q Did it outline what you did in connection with the stock manipulation?

A Yes.

Q Involving you in all 40 counts?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q The 39 other counts you say were dismissed?

A Yes, sir.

Q Now, in the At Your Service Leasing case, the information there contained how many counts?

A I believe one.

Q In At Your Service Leasing, will you tell the jury what period of time -- withdrawn.

Was that astock manipulation?

A Yes, sir.

Q Was there a bust out scheme used in connection with tht stock?

A Yes, sir.

Q Were there severe losses to brokers?

MR. MC GUIRE: I object as to form.

THE COURT: Sustained.

Q How did the bust out scheme work in At Your Service Leasing?

A TDA Securities Underwrote --

Q Can you give us the period of time first?

A Right after Belmont. June, July, August of

'70, right after the Belmont deal because --

Q You mean when the Belmont deal ended you went into another stock fraud?

A I needed the money to pay Louie off so I had t get the money. So the TDA Securities underwrote the issue and they --

Q Can you speak up in a loud voice?

A Yes.

THE WITNESS: Your Honor, may I trouble you for a minute?

(At the side bar) .

THE WITNESS: I was instructed through Mr. McGuire, he said you instructed me not to say anything prejudicial against Mr. Dioguardi or Mr. Ostrer. Now, in At Your Service in order for me to explain the deal --

THE COURT: YRu meanif it involves some indication that your life had been threatened?

THE WITNESS: Not only that. I understood Mr. Dioguardi was heavily involved in At Your Service Leasing, and by me answering that question --

MR. GOLDBERG: I asked how the bust out worked. I dind't ask who participated with him in At Your Service Leasing. I don't recall ever asking him that. Did I, your Honor?

MR. MC GUIRE: It seems to me the question was how the entire scheme worked.

MR. GOLDBERG: I didn't think so.

THE COURT: What is your question now?

MR. GOLDBERG: Was there a bust out scheme used.

THE COURT: He answered yes.

MR. GOLDBERG: What was the bust out scheme. Does that involve the defendant Dioguardi?

THE COURT: What is your answer?

THE WITNESS: Yes. That is why I took Mr. McGuire's instruction from the Judge and didn't answer the question.

MR. GOLDBERG: I will withdraw the question.

THE WITNESS: I am sorry to bother you.

THE COURT: This is no bother. Thank you very much for calling this to my attention.

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(In open court.)

THE COURT: The last question is withdrawn?

MR. GOLDBERG: It is withdrawn.

Q Did you advise the United States Attorney that several years ago you had acted as a middleman in passing a hundred and fifty thousand dollars in stolen Treasury bills?

A Will you please rephrase that last question?

Q Did you advise an Assistant United States Attorney by the name of John Wing that four or five years ago you acted as a middleman in passing a hundred and fifty thousand dollars in stolen Treasury bills?.

A That is not so, so your question is wrong.

Q You did not advise him of that?

A No, sir. I didn't pass a hundred and fifty thousand dollars in stolen Treasury bills.

Q Did you involve yourself in the passing of stolen Treasury bills?

A I was involved, but --

Q Is the figure wrong?

A No, you said they were passed. They were not passed.

Q It never succeeded when you say it was not passed? What do you mean?

A I explained it to Mr. Abramowitz, who was then

Assistant United States Attorney with the office when he called me and asked me about it.

Q Did you participate in any crime involving stolen Treasury bills?

A No, absolutely not.

Q Did you advise Assistasnt United States Attorney Wing that you had obtained a stolen credit card from Anthony Soldano?

A That I had obtained?

Q Yes.

A The answer to that question is that I acted as a middleman in that.

Q Yes?

A As a middleman, yes.

Q You knew when you secured the credit card from Anthony Soldano it was stolen?

A I didn't secure it. I introduced Soldano to people that he sold it to.

Q Do you have any expectation of being prosecuted in connection with any of your conduct?

A Mr. Goldberg, I answered that question a hundred times, I do not expect to be prosecuted for any crime past the date that my attorneys made the understanding with the government.

Q You first met with someone to discuss the Belmont deal in the year 1970, January or February? Am I correct?

A It is so general I don't understand what you are talking about.

Q Did you embark upon a stock fraud in connection with Belmont Franchising?

A Yes.

Q And when did you have a discussion with anyone for the first time in connection with manipulating that stock?

A In February.

Q And that discussion was with whom?

A Murray Taylor and Freddy Goodman with Eddie Garoff present in the room, but not part of the fraud.

Q You had known Taylor and Goodman from prior stock frauds?

A Yes.

Q You had worked with them before?

A Yes.

Q And after the Belmont deal you worked with them on other deals?

A Not with them, sir, no.

Q Did you work with them on any deals in addition to Belmont and Imperial?

MR. MC GUIRE: I object to other people's participation; it's not part of this. I ask Mr. Goldberg be admonished.

THE COURT: I have repeatedly issued those instructions and I sustained the government. Will you please pay heed to my ruling?

MR. GOLDBERG: I will, sir.

Q Did you have anything to do with a stock known as Trimatrix? Do you know the stock Trimatrix?

A I t was not a stock; it was a company, but you're referring to it becoming a public company. Trimatrix was never public.

Q Did you attempt to make it public?

A Yes, sir.

Q Were you enjoined by the SEC?

A What do you mean by enjoined?

A Were you enjoined from trading in any of the securities of Trimatrix by the Securities & Exchange Commission?

A No, Mr. Goldberg. You are saying things -- you don't know what happened -- you are just saying things and it is not so.

I did--

Q You did what?

A Never mind.

MR. GOLDBERG: May I have this document marked for identification.

xx (Defendant Dioguardi's Exhibit C was marked for identification.)

Q I show you this document, Defendant's Exhibit C for identification. Look at it. Read it to yourself, if you will.

MR. EDELBAUM: What is Exhibit C?

MR. GOLDBERG: Defendant Dioguardi's Exhibit C for identification.

Q Please look at it. Read it to yourself.

Have you read it, sir?

A No, I have not finished yet. Yes?

Q Did the Securities & Exchange Commission proceed against you in connection with your dealings with Trimatrix?

A No, sir. Just --

Q Just as far as what?

MR. MC GUIRE: I object to the form of the question. He doesn't need to argue with the witness.

THE COURT: Sustained.

Did the Securities & Exchange Commission proceed against you in connection with Trimatrix?

A May I explain?

Q Yes.

A Trimatric was a company that was formed to solve the personal identification problem, and Trimatrix was a six volt battery portable operated unit that solved the personal identification problem. Everybody would get his secret code, and only you would know the code --

MR. GOLDBERG: Your Honor, might I just ask him whether the Securities & Exchange Commission --

THE COURT: You asked him to explain, and I am goin to let the witness explain.

A (Continuing) There were 36 letters on a 6 volt battery portable operated unit, and if you take 36 letters to the 4th level you have a million eight hundred thousand different configurations, and that means you can have a million eight hundred thousand different codes, and if you times that by a hundred, and we can make A,B,C -- there are a hundred different ways -- but on the card to your naked eye you wouldn't know there was a hundred different ways, so you have close to two trillion different configurations. We planned that that would eventually take the place of Social Security numbers and everybody in the world could be assigne their own personal identification number.

So if you went to an airline with a credit card, or if you went to a bank for personal identification, if you knew your code, it would energize a green light, and then we would know it was you. If you didn't know the code, it would energize a red light and we would know it was not you. It was a plan that was invented; it was a foolproof plan.

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And people had seen the machine work and they wanted to invest money in the company. And we got myself, my cousin, and people that were involved in the company, had raised approximately 250,000 or $300,000 for the infant development of this machine, and then in order to raise the rest of the proceeds we filed a registration statement with the Securities and Exchange Commission.

Now, as Mr. Goldberg referred before, I was barred from the Securities business in 1960 or 1961, from acting as a registered representative, but right in the prospectus for Trimatrix that was filed with the Securities and Exchange Commission it was so stated I was barred from the securities business in 1961.

The Securities and Exchange Commission does not rule on the merits of an issue; it only rules on the accuracy, what you say. Even now that I am in prison if I wanted to file a registration statement, if I had an idea --

MR. GOLDBERG: Must we hear this lecture on the law, your Honor? I move to strike that.

THE COURT: Nothing will be stricken. I don't think we need any further explanation from him.

Q Were you barred in 1969 in connection with Trimatrix from any further violations of the Securities Act of 1933?

A Yes.

Q Yes? Is that right?

A Yes.

Q But you continued nevertheless after November 1969 to violate provisions of the Securities Laws in connection with other stocks? Isn't that so?

MR. MC GUIRE: The question calls for a conclusion.

THE COURT: Objection sustained.

Q In connection with the stock known as Globus, were you not ordered by Judge Croake to file with the Securities and Exchange Commission quarterly reports reflecting your holdings and tradings?

A Yes, sir.

Q That was a court order? Is that correct?

A I never saw it.

Q And there was an order, was there not, by Judge Frankel of this court requiring you to do the same? Isn't that so?

A I never saw the order, Mr. Goldberg.

Q But you knew of the order?

A Yes, sir.

Q You disobeyed the order, did you not?

A Technically, yes.

Q When you say technically, are there reports filed by you?

A No, sir, but I didn't owe any stock in my name, either. That is why I say it is a technicality.

Q Stock owned beneficially or of record? Do you understand what that means?

A Yes.

Q During the period of time after the orders of Judge Frankel and Judge Croake did you have stock beneficially owned by you?

A Yes, sir.

Q Didn't you understand that you would have to file reports?

A I didn't understand at that time

Q You didn't file any reports?

A No, I didn't file any reports.

Q From the time of the first order of Judge Croake you ignored it?

A Yes.

MR. MC GUIRE: I object. May the question and answer be stricken?

THE COURT: Strike it.

Q Do you have any expectation that you are going to be prosecuted or proceeded against in any way for not complying with the order of Judge Croake or Judge Frankel?

MR. MC GUIRE: Objection.

THE COURT: Objection sustained.

Q Now, Scotty Elieson is a friend of yours? Is that correct?

A No, sir.

Q Did you know Scotty Elieson from school days?

A No, sir.

Q Do you know the name Scotty Elieson?

A Yes, sir.

Q Who is Scotty Elieson?

A He is a young man, a man that lives in my mother's building in Florida.

Q Did you tell him to buy shares of stock in Belmont?

A Yes, sir.

Q Did he make or lose money in connection with the Belmont stock?

A He told me that he broke about even. I think he made a few dollars.

Q Did you make any commitment to Fred Goodman that you would guarantee him for his activities in connection with Belmont Franchising the sum of $45,000?

A No, sir.

Q Did you tell Fred Goodman he could recoup what he had lost with you in other stock deals?

A I told Soldano and Goodman that, yes.

Q Do you know whether they made any money in connection with the stock of Belmont Franchising?

A Soldano got all the money.

Q How about Goodman?

A He got robbed.

Q He got robbed?

(The witness nods his head.)

MR. MC GUIRE: May the record indicate that the witness was nodding yes.

Q Did Goodman ever call you to your face a fat crook?

A Not that I remember.

Q Or a fat swindler?

A Not that I remember.

Q Did you tell Goodman that he would have enough shares of Belmont Franchising in his name and the name of Soldano to assure him $45,000?

A No, I told that to Soldano, not to Goodman.

Q Did yo have any discussions with Bruce Halpern?

A Yes, sir.

Q Did you tell him that if he assisted in the manipulation of the stock of Belmont that he would receive a 50-50 split of the profits with you?

A No, sir.

Q Did you make any offer of moneys to Bruce Halpern in connection with the manipulation of Belmont Franchising?

A I made a deal with Mr. Halpern.

Q To give him money?

A To split profits with him and guarantee his losses.

Q Did you split profits with him?

A No.

Q You reneged on your promise?

A He didn't make any profits.

Q You said that you would split his profits or you would split with him your profits?

A No, his profits on the 4300 shares that he had purchased for him and his customers.

Q As a matter of fact he lost money?

A Probably.

Q You told us you guaranteed him against losses?

A Correct.

Q Did you honor your guarantee?

A No, I did not.

3 Q You went back on your word, such as it is ?

A Because he didn't honor the deal.

MR. MC GUIRE: Objection, and I move to strike as argumentative.

THE COURT: Yes. I have cautioned you, Mr. Goldberg. Please I wish you would pause and consider the direction you are going. Please eliminate rhetoric and please eliminate using cross examination for summation.

Q Newburger, Loeb & Company, do you know that compa

A Yes,sir.

Q Is that a brokerage company?

A Yes.

Q Do you know Walter Tepper?

A Yes.

Q Did you ask Walter Tepper to purchase shares of Belmont Franchising to be held by Newburger, Loeb? Just answer the question.

A You are not asking the question properly.

Q I will try it again.

A Please.

Q Do you know who Walter Tepper was associated with in 1970?

A Yes, sir.

Q Who was he associated with?

A Newburger, Loeb.

Q What was he with Newburger, Loeb?

A A registered representative and he took care of part of the operations.

Q Did you have any conversations with Walter Tepper with respect to the trading in Belmont Franchising?

A Yes, sir.

Q Did you ask Walter Tepper to take a position in Belmont Franchising on behalf of Newburger, Loeb, or customers of Newburger, Loeb?

A Yes.

Q You told him to buy shares of Belmont Franchising Corporation for his customers? Is that a fair statement?

A Yes, sir.

Q These were customers that you didn't know? Is that right?

A I even gave him some customers.

Q But there were customers you didn't know?

A No, I think most of them I knew. His brother-in-law was a customer of my restaurant at the time, so I think I knew him. There were a few hundred shares he bought for isolated customers.

Q You gave him the business?

A Yes.

Q How much money did Tepper lose or Neuburger, Loeb lose in Belmont Franchising?

A I don't know.

Q Do you know whether they lost $200,000?

A I don't know.

Q Do you know whether they had any losses?

A I don't know the ultimate outcome of the suits or anything else.

Q Do you know whether the shares they purchased were ever picked up by the customers?

A I know 4,000 shares were not paid for by the customers.

Q If they were not paid for, what is the effect on the brokerage house?

MR. MC GUIRE: I object.

THE COURT: Objection sustained.

Q You have been dealing with stocks and bonds for a number of years?

A Yes, sir.

Q When you say the stock was not paid for, what does that mean?

MR. MC GUIRE: I object to this, your Honor.

THE COURT: May I see you at the side bar.

(At the side bar.)

THE COURT: I very thoroughly dislike getting into characterizations, but I think this question either displays an abundant lack of understanding or is deliberate, because it is clear the fact that something is not paid for doesn't necessarily mean that eventually it is going to end as a loss. Like any contract that a brokerage firm may have with a customer, or anybody else, if there is a default of any obligation, the brokerage firm is free to sue and may eventually recover. I think you should know that.

MR. GOLDBERG: I know more than that. Seymour Goldstein testified they lost $200,000.

THE COURT: I must ask you to phrase your questions properly.

MR. GOLDBERG: I ask them in good faith, and there was testimony on this.

THE COURT: The objection is sustained, and now, please, please be very careful as you proceed, because I am running out of patience with you.

(In open court.)

Q . Did Walter Tepper ever tell you that Newburger, Loeb had lost money as a result of Belmont Franchising?

A The answer to your question without an explanation is no. If you would like me to explain it to you, Mr.

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A Yes.

Q Did you ever tell Michael Caricato that Anthony Soldano was your partner?

A No, sir, not that I remember.

Q When you say you don't remember, is there some doubt in your mind?

A A doubt? I just don't remember saying it.

Q Did you tell Michael Caricato that you controlled everything?

A Yes, sir.

Q Did you tell Michael Caricato that it is your deal?

A Yes.

Q Were you indicted in connection with a company known as Natco, or Merchandise Plus?

A Yes, sir.

Q How much money was involved?

A I would say approximately around $60,000, sir.

Q Did you receive any of the proceeds?

A Yes.

Q Was that indictment ever prosecuted against you to trial?

A Against me, sir?

Q Yes.

A No, sir.

Q What happened to that indictment?

A I assumed that the government is not going to prosecute me, I don't expect them to, in any of the crimes that I committed before my attorneys made the understanding with the government.

Q Now, you told us on direct that you first met the defendant Dioguardi in the early 1960s? Is that correct?

A Yes, sir.

Q The defendant Dioguardi was a friend of your father's? Is that correct?

A No.

Q Where did you meet the defendant Dioguardi for the first time?

A For the first time in the Essex House.

Q Did you ever see your father speak to the defendant Dioguardi?

A Yes, sir.

Q Did you ever see him go out socially with your father?

A Johnny? My father and I had lunch together four or five years later after I first met Johnny in the 1407 Club in New York.

THE COURT: Where?

THE WITNESS: In the 1407 Club, 1407 Broadway.

Q You were going into business, were you not, at the time?

A no, I already had Michael's STeak House; I already owned Michael Steak House.

Q Didn't you purchase Advertising Specialties from John Products?

A Yes.

Q You purchased a number of such items from John Products?

A Yes.

Q What did you understand the defendant John Dioguardi's connection was with John Products?

THE WITNESS: May I consult with your Honor, please?

MR. GOLDBERG: I will withdraw it and ask it this way:

Q Was John Products a company owned by the defendant Dioguardi and his son?

A Yes, sir.

Q Did you purchase Advertising Specialties from that company?

A Yes, sir.

Q Over a number of years?

A Yes.

Q And you didn't pay all your bills to John Products?

A Not so.

Q You paid each and every one of your bills?

A That is right.

Q John Products was located where?

A First it was -- I took over the John Products office -- you will excuse me -- let me start again --

The original office, I remember, was up on Broadway ina building somewhere. That was when I first met Johnny years before. But when I later got acquainted with him, his office was on 29th Street and Park Avenue, which later I subleased for myself and Johnny moved to 29th Street and Fifth Avenue.

Q You promised, did you not, the defendant Dioguardi that when you took over the lease on 28th Street you would pay the rent?

A Yes.

Q Did you?

A Yes, sure.

Q Did you default?

A Yes.

Q You didn't pay the rent?

A Can I explain that, please?

Q Did you fail to pay the rent for any particular period of time?

MR. MC GUIRE: I object to this. I don't see what it has to do with anything.

MR. GOLDBERG: I will connect it up, your Honor.

Q You say you paid the rent and then you say you didn't?

A That is correct.

Q Does that mean you paid the rent for some months and you didn't pay it for others?

A That is right.

Q Now, the defendant Dioguardi lived in Queens? Is that correct?

A Yes, sir.

Q Did you purchase a home for yourself and your wife in Queens?

A No, sir.

Q Did you purchase a home for yourself in Queens?

A No, sir.

Q Did you live in Queens?

A Yes, sir.

Q Did you live in Queens before the defendant Dioguardi or after him?

A After him.

Q You purchased an apartment or a home in Queens?

A First I rented an apartment and then my wife -- at that time she was not my wife -- purchased a home in Queens.

Q You chose, did you not, to move to Queens?

A Yes, sir.

Q Close to the defendant Dioguardi? Isn't that right?

A Yes, sir.

Q You wanted to be in a position, did you not, to be able to use his name or be seen with him? Isn't that so?

A No, Mr. Goldberg. Johnny and I were very, very good friends.

Q As you saw it?

A Well, he saw it, too, because we were friends for four or five years.

Q Now, did he ask you to move next to him?

A He said it wouldn't be a bad idea.

Q Whose idea was it?

THE COURT: Will you let the witness complete his answer.

A Mary Ann went -- excuse me, please --

Your Honor, may I again --

MR. GOLDBERG: Maybe I will reframe the question.

Q Did you purposely choose the Borough of Queens in which to reside close to the defendant Dioguardi so that you could further your friendship with him?

A We were already friends.

Q You told the jury --

A I wanted to, I liked living near Johnny, I wanted to live near Johnny, we were very, very good friends.

Q You wanted to live near him and be his friend?

A We were friends.

Q You wanted to continue that friendship?

A Right.

Q So that you could tell people you were with Johnny? Is that right?

A No, I was personal friends with him before we had a business relationship.

Q You wanted, sir, isn't it so, to be seen with this man as much as you could? Isn't that true?

A No. I enjoyed being in Johnny's company, I had fun being with him. I liked going out with him and I liked going to his house. I liked him to come to my house. But why would I have dinner with him alone in my house if I just wanted to be seen with him?

Q Did you follow him to restaurants where you knew he had been eating in an effort to be seen with him during the year 1969?

A Mr. Goldberg --

Q --and 1970?

THE WITNESS: May I answer?

THE COURT: Surely.

A Mr. Goldberg, I saw Mr. Dioguardi, I saw Johnny practically every day in my life.

Q By your choice or his?

A I think mutually, because I would go to his office at 5 o'clock every night, and that was my last stop every night no matter what I did; we had dinner three or four nights a week; we drove home together; we drove to work together; we did everything together.

THE COURT: We will suspend for lunch now, ladies and gentlemen. We will resume again at five minutes past two.

(Luncheon recess.)

AFTERNOON SESSION
2:10 p.m.

(In the robing room)

MR. GOLDBERG: Your Honor, may I proceed?

THE COURT: Yes.

MR. GOLDBERG: I have asked for this conference because I intend to conclude my examination with just a couple of questions, but I want to make an offer of proof so that we won't get into any need for a side bar.

I understand, in light of what Mr. Morvillo said yesterday, which I accept, that Hellerman said certain mistruths about Dioguardi's lack of complicity. After Hellerman went to Morvillo's office to cooperate in an effort to insure his own safety he might have lied to me and other people about Dioguardi being involved. So I will not ask any question that would relate to any statement by Hellerman exculpating Dioguardi after he went to Morvillo's office. Otherwise I would have to accept the risks of being smacked with the answer that, "I did it because I am afraid of Dioguardi."

There are two incidents in early 1970, one a statement made to a Dr. Philip Maraccini, and another a statement made to Joe Kipnis, the owner of Pier 52, long before the witness Hellerman went to Mr. Morvillo's office --

this is early '70 -- in which the witness said that he was wrong for having continually used Dioguardi's name without Dioguardi's approval or knowledge.

Now, I want to ask that question, give him the time and place and the substance, and then if he denies it I submit that would be an adequate foundation for me to then call Maraccini and Kipnis.

The only reason I burdened you with this is that this is an exculpatory statement before going to Morvillo's office and would not run the risk that Mr. Edelbaum proprely fears and your Honor is somewhat concerned about, as is Mr. McGuire, about the element of fear, because it is something before, long, long before the cooperation. I just wanted to bring that up so that when I raise it the dates are kept in mind and we don't think that it is after.

MR. MC GUIRE: I must say I am mystified, your Honor, because if Mr. Goldberg is correct and these incidents occurred in early 1970 --

MR. GOLDBERG: February or March, Mr. McGuire. When I said "early" I was not precise. It was February or March. You claim Dioguardi is in on it since January of '70.

MR. MC GUIRE: I think Mr. Goldberg is

incorrect as a matter of fact. I think Mr. Hellerman has testified that so far as specific conversations between himself and Dioguardi with respect to Belmont were concerned, the first such conversation took place sometime in late February or early March.

MR. GOLDBERG: But he has testified -- forgive me.

MR. MC GUIRE: And not in January as Mr. Goldberg said. It may well be that what Mr. Goldberg is referring to is conversations that took place between Hellerman and these other people with respect to transactions which are not in issue in this trial. I have no idea what the witness will answer, but it seems to me that what has been raised here raises a threshold question of relevancy.

MR. GOLDBERG: May I answer, your Honor?

The government offered through direct the testimony of Michael Hellerman that in November of 1969 he became a partner of the defendant Dioguardi. The witness Hellerman said he became a partner of he defendant Dioguardi and Dioguardi had 25 per cent of him and had a percentage in deals.

I offer testimony in February and March concededly not specific on its issue of Belmont. I don't want to misrepresent that. There is no discussion about Belmont with these people. There is a discussion in which, in the Kipnis incident, the witness wanted to purchase an interest in a restaurant known as Dinty Moore's with Kipnis. Kipnis was told by Hellerman that Hellerman was going into this deal with Dio, that Dio was his partner in everything he did, and that's the way it was presented to Kipnis. Kipnis spoke to Dioguardi and the three were at a restaurant, whether it was Dinty Moore's or someplace else, in which Hellerman apologized for having used the name of Dioguardi and represented Dioguardi was his partner or was interested with him in any business transactions and said to Kipnis that he was using the name Dioguardi because he thought this might ingratiate him with Kipnis, who was a friend of Dioguardi.

It is true it doesn't relate to Belmont, but there is other conversation, I am trying to recollect it, Mr. Panzer has notes, there is other conversation in which Kipnis says that Dioguardi asked him, "Am I a partner of yours? Am I a partner in any of the things you do?"

And Hellerman said, "No."

MR. EDELBAUM: Your Honor, may I converse with Mr. Goldberg privately for about five minutes? I think it will clear up very quickly.

THE COURT: Yes, you may.

MR. EDELBAUM: I am very concerned about my being tied up in this trial with Mr. Goldberg's client, my client, and I don't want something to happen which could very well happen from his recitation of what he proposes to ask and the dangers that could occur. May I just converse with him outside?

THE COURT: Yes, before you do, would you have any objection if I asked Mr. McGuire's office to provide me with a messenger to go up to the doctor's office to pick up this report, because I don't have anybody at hand.

MR. EDELBAUM: Of course not.

THE COURT: Would you arrange to do that for me?

MR. MC GUIRE: I will try. I don't know whether we have a messenger available, but I will make the appropriate inquiries and if there is one, if he isn't on annual leave, as the whole federal government seems to be these days, I will request that.

THE COURT: I would like that messenger to go up at 4:30. It is East 18th Street, as I recall. I just have nobody.

Do you mind if Mr. McGuire remains here?

MR. EDELBAUM: No.

(Mr. Edelbaum and Mr. Greenberg leave the robing room and return)

MR. GOLDBERG: I will have to defer to Mr. Edelbaum's suggestion. I think he is correct and I will withdraw the offer of proof.

MR. EDELBAUM: This is another proof that I am not working in opposite directions.

THE COURT: I am sorry. If I get a little abrasive, I really don't mean that.

MR. EDELBAUM: I am very sensitive to that.

MR. GOLDBERG: I am happy that you said that because, you know, I have my own problems, your Honor. You have no idea. Everybody has talked about their problems.

THE COURT: You gave me some real indication --

MR. GOLDBERG: There isn't any night I am able to sleep.

THE COURT: Off the record.

(Discussion off the record)

THE COURT: This deposition that is going to go forward with Mr. Kelsey presumably is Friday, is that correct?

MR. MC GUIRE: That would be our application, your Honor.

THE COURT: I am going to be available, hold myself ready to answer any call that you may have for me. You may use the robing room.

MR. MC GUIRE: That presents a problem. I will tell you why it is a problem. If we don't take a deposition before a judicial officer, there is going to be delay. There may be improper questions asked and we would want immediate rulings.

THE COURT: That is why I say I will be available, instantly ready to answer your call in the event any line of questions or any other problem arises which you feel requires an immediate decision. I am not going to be present at the deposition only because I want to spare the witness to the extent that I can any additional pressure.

MR. EDELBAUM: I think he would be just as relaxed --

THE COURT: I would be glad to do that if you feel I should. I will be available for it.

MR. EDELBAUM: We all could smoke, you could smoke your pipe. We will make it as relaxed an atmosphere as possible.

THE COURT: Then I will do that.

I have one other suggestion. I don't really know whether he has come here with his doctor from Bangor. Is his doctor here, too?

MR. MC GUIRE: No, your Honor.

THE COURT: Do you think as an added precaution he ought to have a doctor of his own choosing available to him so that we can get some indication if tensions build up or a situation is created which might have a prejudicial effect upon his health?

MR. EDELBAUM: The doctor can immediately check his pulse or something like that.

MR. GOLDBERG: I have a suggestion. The last Dioguardi trial had health problems and the government searched for a cardiologist who would be available on a Friday morning to conduct an examination at West Street and he couldn't find anybody, but they found a doctor who is semi-retired but an outstanding cardiologist -- I see Mr. Wing outside -- Dr. Harry Jaffe. He is in Manhattan. He is an eminent cardiologist and a professor at Mt. Sinai. He is a top cardiologist.

Mr. Wing from your office should be questioned, Mr. McGuire. I think his hours do not include Friday, as I recall the last case, and he might be available, whereas Dr. Blitzman was not.

Can I make a statement first off the record and then if you think it should be on the record?

THE COURT: Yes.

(Discussion off the record)

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2/1 pm

MR. MC GUIRE: Do we have anything further here?

THE COURT: Nothing, as far as I know.

(In open court, jury present.)

MICHAEL C. HELLERMAN, resumed.

MR. MC GUIRE: If the Court please, Mr. Schaffer, as you know, has been asked to be excused for a few minutes. I expect he will be back shortly.

THE COURT: Very well.

MR. GOLDBERG: I have no further questions, your Honor.

MR. EDELBAUM: May I proceed, your Honor?

THE COURT: You may.

CROSS EXAMINATION

BY MR. EDELBAUM:

Q Mr. Hellerman, how old are you, sir?

A Thirty-four.

Q I think you told his Honor and this jury that you are married?

A Yes, sir.

Q Would you tell us, please, what your education has been?

A I have a B.S. in economics with a major in accounting, Bachelor of Science in economics with major in accounting from Franklin & Marshall College in Pennsylvania.

Q You have your Bachelor of Science degree from Franklin & Marshall?

A Yes, sir.

Q When did you graduate from there?

A 1959.

Q 1959?

A Yes.

Q What was your first involvement in any type of business after your graduation from college?

A I went to work for Russell & Sachs, which is an over-the-counter firm on Wall Street. First, I graduated in June, I did my six months in the Army. When I came out of the Army I went to work for Russell & Sachs in Wall Street. That would be early 1960.

Q Do I understand by saying six months in the Army, that you went in the six months and so many years on reserve after you served your six months?

A Yes, sir.

Q Your father was a banker, was he not?

A Yes, sir.

Q He was vice president of one of our leading banks in the city, was he?

A Two of our leading banks at one time or another.

Q When did he die?

A Five years November, I think, 1968. November of '68, sir.

Q Now, before he died had you become involved in any way in any criminal activity, without telling us what it was? I just ask you that general question.

A Just the Securities and Exchange Commission disbarment in 1961.

Q You went into the restaurant business, I think you told us?

A Yes,sir.

Q When was that, sir?

A I believe 1964. It could have been '65, but I believe it was 1964.

Q What was the name of that restaurant?

A Michael's Steak House.

Q Did you have any partners?

A Yes, I did have partners, sir.

Q Your investment in that restaurant, was that from your family?

A Family and friends.

Q Now, tell me, I think you told us that it was in November, 1969, that you first met Mr. Ostrer?

A Yes, sir.

Q You told Mr. Mc Guire that that first meeting with him was social. That is not exactly accurate, is it?

A Yes, it is, sir, because through my friendship with Johnny I met Mr. Ostrer in different restaurants, and that is how I got to know Louie. Louie and I never made a date to go out, his wife and my wife, or anything like that, but I would be in a restaurant with Johnny and he would be in the restaurant, and that is how we met.

Q He would be in the restaurant with other people?

A Yes.

Q So you casually met him in a restaurant?

A Correct, sir.

Q You didn't go out to eat with him as such? Is that right?

A Not an appointment with Mr. Ostrer and I to eat, no.

Q You just bunked into him in various restaurants along New York?

A Right.

Q Isn't it a fact that there came a time when you approached him to help you get an insurance policy?

A Excuse me, Mr. Edelbaum. Louie --

Q Please. If you can't answer the question directly, will you tell me you can't answer it, that you have to explain it, or something like that, or you don't understand it, and I will try to reframe the question.

I think, Mr. Hellerman, we will move along more quickly.

A I apologize.

Q No apology necessary.

A The answer to that question, sir, is no.

Q Did there come a time when you went to him and you told him you had a weight problem and that you had heard that he couldget you an insurance policy?

A The answer to the question the way you ask it is no.

Q Did somebody tell you, without telling me anything else, that Mr. Ostrer could get difficult insurance? Did somebody tell you that before you went to see him?

A The way you ask the question I would have to answer it no, sir.

Q Did he ever solicit you for the insurance?

A Yes.

Q Where? When was that?

A . In Ponte's, in any restaurant I would meet him, Louie would be with Hickey, and Hickey would say, "How come you don't give my friend Louie some insurance business?"

Q He never directly did that?

A He was always sitting there, sir.

Q Didn't there come a time when you did go to him after that and you did say to him, "I would like you to get me some insurance?"

A No, I never went to him and asked him to get me insurance like that, no, sir.

Q Isn't it a fact that he told you that he couldn't directly get you insurance because he had no license? Didn't he tell you that?

A Absolutely not, no, sir.

Q Didn't he refer you to a man named Greenfield? Didn't he?

A Excuse me --

Your Honor, may I, please?

THE COURT: You want to come to the side bar?

THE WITNESS: Yes.

(At the side bar with the witness.)

THE WITNESS: Your Honor, again relying on what Mr. Mc Guire instructed me at your instructions I should not prejudice any of the defendants in my testimony, Mr. Edelbaum asked me a question as far as Mr. Ostrer telling me that he couldn't practice the selling of insurance. Mr. Ostrer is on five years probation on some -- I don't know what you classify the case as -- and Mr. Edelbaum defended him, and I also knew that Mr. Ostrer was up to the point I knew him, to the time in my relations, practicing insurance and soliciting insurance at that point.

MR. EDELBAUM: All I want you to do is answer the question.

THE WITNESS: You asked me for an explanation.

MR. EDELBAUM: I didn't ask you for an explanation.

I am sorry to address the witness directly, your Honor.

THE COURT: May we hear the last question?

MR. EDELBAUM: The last question was, didn't he refer him to Seymour Greenfield.

THE COURT: Can you answer that?

THE WITNESS: You mean for life insurance?

MR. EDELBAUM: Yes.

THE WITNESS: No. I met Mr. Greenfiedl in the course of knowing Mr. Ostrer, but Mr. Ostrer handled me personally.

MR. MC GUIRE: I object to Mr. Edelbaum conducting this examination of the wimess at the side bar.

MR. EDELBAUM: If there is an objection, I will desist.

2 m (In open court..)

(In open court)

BY MR. EDELBAUM:

Q Isn't it a fact that you got $285,000 through the insurance through model agency which was owned by Mr. Greenfield, isn't that a fact?

A I got $285,000 worth of life insurance through Mr. Ostrer. If it was put through the model agency --

Q You never knew it?

A No, sir.

Q You never knew that?

A No, sir.

MR. EDELBAUM: May we have this marked for identification as Ostrer's next exhibit.

(Defendant Ostrer Exhibit G was marked for identification)

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MR. EDELBAUM: I will inform he jury, Mr. McGuire, according to the rules what that paper is before I ask any questions, if that is why you rose.

May I tell the jury, your Honor, I am holding in my hand a paper which is numbered 3545, which was given to me by the government prior to my cross-examination of this witness, which was represented to me to be notes taken by Mr. McGuire at a time he interviewed this witness on 12-13-72 and 12-29-72.

Does that satisfy you?

Pursuant to law he was required to give these to me.

MR. MC GUIRE: That is an accurate explanation, your Honor.

MR. EDELBAUM: Thank you, Mr. McGuire.

Q Now I will ask you to look at paragraph No. 3 of Mr. McGuire's notes of an interview with you and ask you to look at the part which is numbered 3B and read it to yourself, and you tell me whether or not it isn't a fact that you told Mr. McGuire that the insurance was placed through model agency, Mr. Seymour Greenfield. Tell me that.

A No, sir. I gave Mr. McGuire a copy of the insurance form that I had and when Mr. McGuire asked me the name of the agency, I thought it was Modern, I didn't know the name of the agency, I said, "But you have it on the forms." I see model written there but model did not come from my mouth, sir.

Q Do I take it that you never met Mr. Greenfield?

A No, sir, I did meet Mr. Greenfield many times.

Q But you met him many times?

A Yes, sir.

Q Now, didyou ever take -- question withdrawn.

Did you at that time, when you met Mr. Ostrer and you talked to him about life insurance, have a car and a chauffeur?

A Yes, sir.

Q What kind of a car?

A 1970 Cadillac limousine.

Q And uniformed chauffeur?

A Dark suit.

Q And did you take Mr. Ostrer to the -- question withdrawn.

At that time did you have any bank accounts at the Israel Discount Bank?

A The answer to that question is no, sir.

Q Well, did you take Mr. Ostrer -- you are shaking your head before I ask the question. Will you please listen to the question.

Did you take Mr. Ostrer to the Israel Discount Bank and tell him that your mother and you had large certificates of deposit of money which you controlled in that bank, yes or no?

A No.

Q Did you introduce Mr. Ostrer to some of the officers of the bank at that time?

A Which bank, Mr. Edelbaum?

Q Israel Discount Bank.

A No, sir.

Q Never ahppened?

A No, sir, never happened.

Q Now, did there come a time that he met at your house in Bayside?

A Yes, sir.

Q And this house you occupied by yourself?

A No, sir.

Q Were you married?

A At the time, no.

Q But it was your house?

A No.

Q It was in the name of someone else, a lady?

A Yes.

Q But you lived there?

A Yes.

Q Now, when he met you there, was that a Sunday?

A I believe so.

Q Were there other people there when he met you there?

A I don't remember. Besides my wife.

Q Let me see if I can refresh your recollection. Was it your custom on Sunda to have many people in to a lavish breakfast of sturgeon, smoked salmon, large trays and have that in your house at that time?

MR. MC GUIRE: If I might, your Honor, I don't think cross-examination is the forum for argumentative questions of this kind. I object to the form of this.

THE COURT: Without regard to that part of the question dealing with the sturgeon or salmon, would you answer whether it was your custom to have people in on Sunday for breakfast or for any social reasons?

THE WITNESS: Yes, it was.

Q Does that refresh your recollection on this Sunday there were many people there when Mr. Ostrer came?

A I still don't remember if there were many people when I spoke to Mr. Ostrer. I spoke to Mr. Ostrer alone.

Q I am not talking about that. I am talking about the time he came to your house.

A I don't remember the exact hour. I don't remember if anybody else was there.

Q Tell me, was it your intention -- before I get into that -- I withdraw that.

Shortly after you met Mr. Ostrer did you attempt to have him buy some stock of Tabby International?

A No.

Q Isn't it a fact, Mr. Hellerman, that you told him you had 5000 shares at the opening price of $2 for him?

A I don't believe so, Mr. Edelbaum.

Q When you say you don't believe so --

THE COURT: Forgive me, Mr. Edelbaum. Would you two gentlemen desist from any conversation, please.

Q When you said you don't believe so, do you mean you have a doubt perhaps you did tell him you had 5000 shares at $2?

A If I told Mr. Ostrer that, Mr. Ostrer would have taken the 5000 shares.

MR. EDELBAUM: I move to strike that as not responsive.

THE COURT: Strike it.

Q Just listen to the question. I will repeat it.

When you say you don't believe so, does that mean there is a doubt in your mind that you may have told him that, yes or no?

A I don't remember, Mr. Edelbaum, telling Mr. Ostrer anything about that.

Q That is your best answer?

A Right.

Q Tabby's came out at $2, is that right?

A Yes, sir.

Q You jiggled it, didn't you?

A Yes, sir.

Q To what price?

A 8, 8-1/2.

Q And when did it become 8-1/2, how long after you met Mr. Ostrer?

A I can't put any time sequence.

Q It was before Belmont, wasn't it?

A Yes, sure.

Q And now with Belmont. You had this arrangement which you have told us about with Goodman, Soldano and the others to buy the entire box, right?

A Correct, sir.

Q And you wanted to be careful that you had the controlof the whole 27,500 before you went into it, is that right?

A 100 per cent.

Q Because the only way you could jiggle the stock is if you had control of the box, right?

A Yes, sir.

Q When you went to Mr. Ostrer --

A I didn't go to him.

Q Please let me finish my question.

Did there come a time when you spoke to Mr. Ostrer at your house on a Sunday when he came over to take you to the doctor to get our insurance examination? Isn't that right?

A No, sir.

Q When were you examined for the insurance?

A I don't remember, sir.

Q Let me see if I can refresh your recollection.

MR. EDELBAUM: Would your Honor bear with me just a moment, please?

(Pause)

MR. EDELBAUM: May we have these papers marked for identification? Separately, please, Rudy.

(Defendant Ostrer's Exhibits H, I and J were marked for identification)

MR. MC GUIRE: So there is on confusion in the record, I have furnished Mr. Edelbaum with a copy

878

of a 1970 calendar.

Q Do you remember being examined twice for this insurance?

A I remember goingto the doctor twice, yes.

Q Is it a fact thatyou applied for a million dollars worth of life insurance?

A Yes, sir.

Q Were you told the premium that you would have to pay for a million dollars life insurance?

A Yes, sir.

Q How much was the premium?

A Approximately -- Louie said it would be approximately $15,000 a year, between $12,000 and $15,000 a year.

Q How much were you earning?

A For the last three years I earned over $100,000 a year.

Q Did you report $100,000 a year in your income tax returns?

A Every penny.

Q Every penny. Including the money that you got illegitimately, as youhave testified?

A Yes, sir. If you take a look at my tax returns, you will see.

Q At the time you made it?

A Every penny.

Q Every single penny?

A Every penny.

Q Now, does this refresh your recollection -- and is this your signature -- that onthe 14th day of February you were first examined by a doctor? I am showing you Defendant Ostrer's Exhibit J for identification, for the record. You can read it over carefully and tell me if that is your signature.

A It is my signature.

Q And does that refresh your recollection that you were examined for insurance at that time?

A If the document says I was examined I was examined. I don't remember the exact date. It was around that time.

Q Looking at that, the 14th day of February was a Saturday in 1970.

MR. EDELBAUM: Is that correct, Mr. McGuire?

MR. MC GUIRE: If you say so, Mr. Edelbaum.

Q Did you talk to Ostrer on that day about Belmont?

A I don't remember if I spoke to him on that day because I can only sequence the date in my mind as the date that Mr. Ostrer came to my house for breakfast the first time which I put in my mind as approximately -- it was like the last week of February I put it in my mind, sir. If this is the date Mr. Ostrer said it was, it is possible it was. I put it in my mind as the end of February instead of 14th of February. The first day I spoke to Mr. Ostrer about Belmont was the day Mr. Ostrer came to my house for the first time to talk about the life insurance.

Q The first time?

A Yes. So if I was examined by Mr. Ostrer's doctor or this doctor on the 14th, then Mr. Ostrer came before the 14th and my discussion about Belmont with him then was before the 14th. Because the first time that Mr. Ostrer came to my home to discuss the life insurance policy he said, "I will be over, we'll work out everything."

Where is this doctor located, Mr. Edelbaum?

Q It's on there. If it isn't on there, I have no knowledge.

A The doctor I remember going to see was a doctor in Queens somewhere.

Q Yes.

A The first time we went, I don't remember, I think the doctor wasn't in or something, and we had to go back again to the doctor. But the first time that I spoke to Mr. Ostrer about Belmont was when he came to my home the first time. He came twice to my home.

Q The second time he came to your home, was thatalso in connection with an examination?

A I don't know if it was -- it was in connection with the insurance, yes.

Q The insurance?

A Yes, in connection with the insurance, and that was the day I finalized the deal with him.

Q I show you Ostrer Exhibit H for identification. Isn't it a fact you were examined on the 24th of February by a doctor, and that date is on a Tuesday?

A Can you tell me the name of this doctor?

Q It's on there.

A Is it the same doctor?

Q No, I think it's a different doctor, you had to be examined by a different doctor.

A What date is this?

Q The 24th.

MR. MC GUIRE: The colloquy that is going on between the witness and Mr. Edelbaum that aren't in evidence. It might be confusing. I object to it.

MR. EDELBAUM: I offer them both in evidence.

MR. MC GUIRE: May I see them?

MR. EDELBAUM: Of course (handing).

MR. MC GUIRE: May I inquire on voir dire, your Honor?

THE COURT: Would you please confer with Mr. McGuire?

MR. MC GUIRE: I would like to ask a few questions on voir dire.

VOIR DIRE EXAMINATION

BY MR. MC GUIRE:

Q Mr. Hellerman, these two documents that have been offered in evidence are photocopies of documents that appear to bear signatures at the bottom. Now, do you recognize the signatures at the bottom, sir?

A Yes, I do.

Q Did you signthe originals of these documents?

A If that is a photostat, yes, sir.

THE COURT: Keep your voice up.

Q Don't volunteer anything. Just answer questions.

A Yes.

Q Did you sign the originals of these documents?

A Yes, that is my signature.

Q Are these the complete documents that you signed, do you remember?

A No, I don't remember.

MR. MC GUIRE: If they exist, we would call for the remainder of the documrnts if these are not the complete ones.

MR. EDELBAUM: All the documents are contained in the policy that he has, but this other one here I would be very happy to show you. If you want me to offer that, I will offer that, too.

MR. MC GUIRE: Mr. Edelbaum has handed me what's been marked as defendant Ostrer's Exhibit I. May I take a moment to examine it, your Honor?

THE COURT: Yes.

(Pause)

MR. EDELBAUM: Mr. McGuire, so that everything is complete, I am going to have this marked.

(Defendant Ostrer Exhibit K was marked for identification)

MR. EDELBAUM: And this marked.

(Defendant Ostrer Exhibit L was marked for identification)

MR. EDELBAUM: Mr. McGuire, those papers

were taken from this. This entire document now is a photostatic copy of thelife insurance policy. There were two policies. Here is the other one. I would be happy to offer both in evidence with no objection.

MR. GOLDBERG: I have no objection.

MR. MC GUIRE: Perhaps I can clear this up on voir dire, your Honor. I amnot trying to be obstructive at all.

Q Mr. Hellerman, I would like to hand you first what has been marked and offered as Ostrer's Exhibit L. Would you look at that, please. Look at all the pages.

I would also like to handle you collectively and together defendant Ostrer's Exhibits K, I, J and H. Would you look at those.

A Yes, sir.

Q Have you examined them?

A Yes.

Q On various pages of those documents, those exhibits, Mr. Hellerman, your signature purports to appear. In each case is it genuinely your signature?

A It looks like it, sir, yes.

Q Are these documents applications for life insurance policies which you in fact made together with the final policy that was issued or copies?

A I didn't fill in the application. I just signed -- I just signed the copy. This is not my handwriting. I don't know whose handwriting it is, but Mr. Ostrer had the facts and he filled in the application.

MR. EDELBAUM: I don't hear you.

A I don't know who filled in the application but I just signed where it said sign insured. My signature is there. Nothing else on the paper is my handwriting.

Q Did you sign the papers with handwriting already on them, Mr. Hellerman?

A I don't remember.

Q Do you know whether or not you signed them in blank?

MR. EDELBAUM: Your Honor, this is not proper voir dire.

MR. MC GUIRE: On the contrary.

MR. EDELBAUM: This is redirect. He has already testffied --

THE COURT: I will allow it.

Q Do you know whether or not you signed them in blank?

A I don't remember. I might have signed them in blank.

MR. EDELBAUM: I move to strike out what he might have done, your Honor.

THE COURT: Strike it.

Q Do you know, Mr. Hellerman, whether the dates that appear on those documents were there when you signed the documents.

A No, I do not.

MR. MC GUIRE: I object to the offer.

THE COURT: May I see the documents?

(Handed to the Court)

THE COURT: We'll take a brief recess.

(Recess)

t4/1 pm

(In the robing room.)

THE COURT: You offered H, I, J, K and L.

MR. EDELBAUM: Yes, your Honor.

THE COURT: It appears that some are duplicates of others.

MR. EDLEBAUM: That would naturally be so, because, Judge, these are photostats of two separate policies, and the same applications would be attached to the same policites. So duplicates would naturally be attached. The only reason I did it was because of completeness.

THE COURT: Let us get on t o the offer and Mr. Mc Guire's objection to it. What is the purpose of the offer?

MR. EDELBAUM: Your Honor, in line with my opening, in laying a foundation for that argument to the jury and my contention, which, I am going to submit to your Honor was that Mr. Hellerman got Mr. Ostrer's confidence by first telling him about Tabby's International - he has denied it, but that will come later -- and then by getting him to try to write a big policy for him, a million dollar policy, to impress him with his car and chauffeur of his reliability, and to set Mr. Ostrer up in the buying of the stock, as he did others, and I want to show the background, which I am entitled to do. The only objection could be as to authenticity. If we are going to waste time, then I am going to ask Mr. Hellerman to produce the originals of these policies, which he has in his possession, and produce them in court tomorrow. They will be the exact originals of those photostats.

THE COURT: Are you offering these exhibits for any of the contents and represented by the spaces filled in?

MR. EDELBAUM: I am not even going to talk about that.

MR. MC GUIRE: The evidence is purely cumulative. The witness has not denied it.

MR. EDELBAUM: It is as to the dates. The doctor fills in the date, not Mr. Ostrer, as to when he examined him.

THE COURT: In other words, you are now offering them for the accuracy of the dates?

MR. EDELBAUM: Yes, absolutely.

MR. MC GUIRE: The witness can testify as to the accuracy of the dates?

MR. EDELBAUM: It is his signature. If you want the originals, we will have to get the policies and waste that time.

THE COURT: You are not objecting to these documents because of authenticity or because you want to see the originals? What is the basis of your objection?

MR. MC GUIRE: Your Honor, my concern here is that Mr. Edelbaum is trying to establish dates through these documents. This is the first time I have ever seen them. I don't know when or if the doctor examined Hellerman. I don't know whether it has any significance in the case. But the witness tells me from the stand that he doesn't remember whether the dates were on the documents at the time he signed them. I would be happy to ask him if he can recall when he was examined by the particular doctors, if that would help him.

MR. EDELBAUM: He says he doesn't remember.

MR. MC GUIRE: In that case the documents without further authentication and without some testimony that the examinations took place on the dates which the documents indicated are insufficient.

THE COURT: You are asking for the laying of a foundation which would require the witness who filled in these documents?

MR. EDELBAUM: The doctor.

THE COURT: I don't know who filled them in.

MR. MC GUIRE: It may be that this matter can be handled by a stipulation. I'm not trying to be obstreperous.

THE COURT: What kind of stipulation do you have in mind?

MR. MC GUIRE: If Mr. Edelbaum can say that the doctor if called would testify he examined the witness on such and such a date, I would very likely accept such a stipulation and be done with it.

MR. EDELBAUM: All I know is from my knowledge, any doctor writing a policy for $250,000 -- I have been examined for insurance; I assume your Honor has -- the doctor fills in the time, the date when he examines him. That is his signature. Do you want me to call the doctor? How can I represent or give you my representation. I was not there. I have not talked to the doctor. Do you want me to go and ask the doctor, go down to his house, show him this, ask him that? That is ridiculous.

THE COURT: It may be ridiculous and it may be onerous, but if I understand Mr. Mc Guire's objection, he wants a foundation laid either by way of a representation, absent that, he wants an opportunity to cross examine as to whether these dates were accurately noted contemporaneously with the application.

MR. EDELBAUM: He can do that on redirect.

THE COURT: That is not laying a foundation.

MR. EDELBAUM: If Mr. Mc Guire is going to take this position, I withdraw my commitments made before about authenticity. I don't care if we are here until Christmas. I have no place else to go. Let him come in and authenticate every document. This is not the way I try cases. It is absurd. There is no contention from this witness that the dates were altered. All he says is he doesn't remember. So what is so important?

THE COURT: You want a representation. Obviously, Mr. Edelbaum has indicated that that is impossible. He has not talked to the doctor; he doesn't know him; so he is in no position to make a representation. If he speaks for Mr. Ostrer concerning these dates, and Mr. Ostrer tells Mr. Edelbaum that these dates were noted and were contemporaneous, would you accept that?

MR. MC GUIRE: No, sir, I will not accept Mr. Ostrer's unsworn testimony about that matter.

MR. EDELBAUM: I think, your Honor, I have laid a proper foundation, sufficient in the court's discretion to admit these in evidence.

THE COURT: How crucial are these dates?

MR. MC GUIRE: I have no idea, your Honor. I don't know what the purpose of Mr. Edelbaum's line of cross examination is. But if he is trying to establish dates through documents, I think we have a right to insist that it be done properly. I submit that it has not been done properly. There may well be other documents which have some bearing on the problem. I don't know.

MR.EDELBAUM: Do you want me to go to something else and not waste the jury's time?

THE COURT: I have just one question to ask of you which will help me resolve this problem, and you need not answer it. Do you expect to call Ostrer?

MR. EDELBAUM: 90 percent, but I cannot make the commitment. I don't know what else is going to be developed in the trial, and as a cautious lawyer, you notice, I didn't tell the jury I was going to. But I would say to your Honor the probability is yes, and I will tell your Honor why, because I think this case is going to go down to the wire on the question of credibility between this creature and Mr. Ostrer.

THE COURT: I think there would be no harm in reserving decision until we see whether Mr. Ostrer takes the stand. It would appear to me for the purpose of these documents that questions elicited to Mr. Ostrer to find out whether he was in the presence of Mr. Hellerman at the time the doctor examined him and on the dates noted will give you something to examine on. Since it doesn't seem to be a very crucial document at this point, I will reserve on it.

MR.EDELBAUM: Will your Honor say in the presence of the jury that you are reserving on it?

THE COURT: I will.

MR.EDELBAUM: Thank you.

MR. SCHAFFER: May I just inform counsel and the Court, I have succeeded in contacting Dr. Jaffe, who will be pleased to be here Friday morning at 9:30.

THE COURT: As long as we are here, I would like to take up another matter with you. It is Hornbook, of course, that the defendants have the rightto be present at every stage of the proceeding, and, certainly, his deposition is a very important stage of the proceeding, because it involves a relatively important witness. Are you going to ask that Mr. Dioguardi and Mr. Ostrer be present at the deposition?

MR. EDELBAUM: I am only concerned about Mr. Ostrer, and the answer is yes.

MR. GOLDBERG: Yes.

THE COURT: Under those circumstances, in order to relieve the possible danger of pressure, what I would propose to do is to take this deposition at one of the counsel tables in open court, and the defendants will remain seated at the second counsel table.

MR. EDELBAUM: Anything your Honor suggests is perfectly all right with me.

MR. MC GUIRE: Very well, your Honor.

MR. GOLDBERG: Should the report, of course, indicate that he can't testify in court.

THE COURT: When the report comes in, obviously, it should be clear that I am going to make the report available to you.

MR. GOLDBERG: Then we reserve our right based on that report to come to a conclusion whether in our judgment he should, subject, of course, to the Court's ruling.

THE COURT: I will certainly hear you out.

MR. EDELBAUM: Yes.

THE COURT: I don't think I kept anything from you during the course of this trial, and I will hear you out.

MR. GOLDBERG: So agreed.

THE COURT: You heard my conversation with the doctor.

(In open court; jury in box.)

THE COURT: Government's Exhibits H, I, J, K and L will not be received at this time; the Court will reserve decision.

MR. EDELBAUM: I will go on to something else.

BY MR. EDELBAUM:

Q You told us, Mr. Hellerman, that you never told

Mr. Ostrer that you had a bank account at the Israel Discount Bank.

A Yes, sir.

Q I ask you this question, did you have a bank account at the Israel Discount Bank?

A No, sir.

Q You never had a bank account there?

A No, sir.

Q The First Israel Bank? Was I giving you the wrong bank?

A That is why I asked you, sir, what bank do you mean. You said Israel Discount Bank.

Q Is there an Israel Discount Bank?

A Yes, sir, there is.

Q Did you take him to the First Israel Bank & Trust Company at any time and introduce him to any officers when you first met Mr. Ostrer? Yes or no?

A I can't answer that question yes or no, sir. I would be glad to explain it if you would like me to.

Q If you can't answer it, just tell me and I will try to rephrase the question.

A Please.

Q Did you ever take him over to an officer of the First Israel Bank & Trust Company and say, "This is

Mr. Ostrer?" Yes or no?

A Yes.

Q Did your mother and you have substantial deposits, certificates of deposit in the First Israel Bank & Trust Company? Yes or no?

A Yes.

Q Which you controlled? Yes or no?

A Yes.

Q Did you tell that to Mr. Ostrer? Yes or no?

A I don't remember.

Q What?

A I don't remember.

Q You would not deny under oath that you told him that? Is that right?

A Possibly I told him. I don't remember.

Q Isn't it a fact that that was part of a scheme on your part to impress him with how substantial you were? Yes or no?

A I can't answer that question yes or no, Mr. Edelbaum.

Q Did you intend to impress him with your substantial worth, money worth? Yes or no?

A I still can't answer it yes or no.

Q Now, were you endeavoring to have him buy some stock of Belmont?

A Yes.

Q As a matter of fact, in this interview with Mr. Mc Guire on December 13, 1972, and December 29, 1972 --

MR. MC GUIRE: Excuse me, if I might, your Honor. If Mr. Edelbaum is trying to show some inconsistency, I suggest a fundation be properly laid.

Q Did you tell Mr. Mc Guire in that interview that you set up Mr. Ostrer to buy stock?

A Yes.

Q And you did that, Mr. Hellerman, just as you did other people you knew? Right?

A Yes, sir.

Q That was for the purpose of jiggling the stock up? Right?

MR. MC GUIRE: I object to that.

THE COURT: Sustained.

Q Did you intend that by getting him to buy stock and these other people that the stock would rise? Yes or no?

A The way you ask the question, no, sir, the way you are asking the question.

Q You were endeavoring, were you not, to create a false market in the stock so that it would rise and you would get a higher price than you paid for it? Is that right?

A You are referring to the time when Mr. Ostrer bought the stock, when Louis bought the stock.

Q I am referring to the time after he bought the stock?

A Oh, after he bought the stock?

Q Yes.

A Then I jiggled the price up, after he bought the stock.

Q That's what I am talking about, because your agreement was to have Mr. Goodman jiggle the stock up to $15?

A Correct.

Q Then you would make $5 a share for all the people you got to buy at $15?

A Right.

Q Right?

A Right.

Q And Mr. Ostrer was one of those people that you were going to make the $5 a share on? Right?

A Correct.

Q In that interview with Mr. Mc Guire --

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MR. MC GUIRE: Your Honor, I objectto this.

THE COURT: Objection sustained.

Q Did you ever tell Mr. Mc Guire --

MR. MC GUIRE: Objection. Unless there is some inconsistency shown on the testimony given by the witness on the stand, then this is not proper cross examination, your Honor.

THE COURT: Objection sustained.

Q Did you take somewhere between 200 and $250,000 out of Belmont? Yes or no?

A Yes.

Q Did Mr. Ostrer lose or make money on Belmont?

A I can't answer that question.

Q You don't know the answer to that question, sir?

A No, sir. If you would like me to tell you why I don't know it, I would be glad to tell you.

Q Just answer the questions I put to you and we will get along very well.

A The answer is no.

THE COURT: What is your answer?

THE WITNESS: The answer is I don't know if he made or lost money.

Q Isn't it the fact, to your knowledge, that Mr. Ostrer still has in his possession 8000 shares of Belmont stock?

A I don't know that, sir.

Q You don't know that.

(Witness shakes head)

Q Now tell me, do you remember June 1, 1971?

A Not offhand.

Q Let me refresh your recollection, if I may.

Do you remember the day you were arraigned on the indictment in Belmont, that you had to come into court and plead not guilty?

A Yes.

Q Was Mr. Ostrer there? Do you remember him being there?

I don't remember. I remember at one time seei [illegible] here, I remember seeing Mr. Ostrer here, I remember seeing Johnny here. I don't know if that is the same day you are talking about. I went down the elevator with you that day.

Q That is another day.

Let me ask you this: The day you were arraigned --

MR. MC GUIRE: I don't know whether it is important or not but Mr. Edelbaum appeared to testify.

MR. EDELBAUM: I withdraw it. You are right, and I apologize.

Q Do you remember a lawyer named Mr. Wynn, who was with Mr. Ostrer on June 1, 1971?

A I am sorry, I don't remember. The only incident I remember is the time when Mr. Edelbaum was here when he spoke to my attorney and Mr. Ostrer was here and Johnny was here. At that time I remember being in the courtroom. I don't know if that is the day you are talking about.

Q Do you know a Mr. Harry Bobish?

A No,sir.

Q Do you remember on the day that you came up the steps to answer to this indictment you saw Mr. Ostrer with some people?

A I remember the day that I described to you, sir. That is the only day that I remember.

Q Did you ever say to anyone, referring to Mr. Ostrer, "He's in this innocently and he is being prosecuted for nothing. It's all my fault."

Do you remember saying that?

A Something similar to that, yes.

Q Was that true?

A No, sir.

Q You volunteered it and it wasn't true?

A Correct.

MR. MC GUIRE: May we have, if possible, a time and place for this incident?

MR. EDELBAUM: I gave the date, Mr. McGuire, June 1, 1971, at about 9:45 a.m. on the steps of this courthouse.

MR. MC GUIRE: Mr. Edelbaum's statement for the record, I have no reason to quarrel with it but it does appear to be his testimony. I think it would be appropriate to establish this, if possible, through the witness.

MR. EDELBAUM: It will be established.

MR. GOLDBERG: Your Honor, can I have a side bar?

(At the side bar)

MR. GOLDBERG: Your Honor, I am concerned that since this is a statement exculpatory of Ostrer after Hellerman became a government informer and Hellerman has now said that he said the statement but it wasn't through that we will get into the situation, if this is pursued, where Mr. McGuire can, under Cirillo, ask for an explanation and then we get into the whole business of fear and threats, and I don't want that to spill over on the defendant Dioguardi.

THE COURT: That is possible.

MR. GOLDBERG: I just remind Mr. Edelbaum of that problem because it's after. With all due respect, it's after the time when he goes to Morvillo's office, which is the key date that we must remember when we seek to elicit exculpatory statements with resepct to our clients.

MR. EDELBAUM: Your Honor, I am fully aware of what I have done, I am fully aware of everything that has transpired here before. I am concerned. I intended to call witnesses to prove what happened, witnesses of impeccable background besides Mr. Ostrer, who will prove exactly what happened here and the circumstances to show that it was something volunteered, nobody asked him. There was no reason for him to volunteer and it wasn't a question that somebody solicited him.

MR. MC GUIRE: There seems to be no dispute the statement was made.

MR. EDELBAUM: The circumstances will become very important.

THE COURT: You merely are here to listen to Mr. Goldberg who has registered a fear.

MR . GOLDBERG: I will tell you why, your Honor. My client is known to at least three of the jurors as somewhat of an organized crime figure, and threats and fear would inure to the detriment most definitely of Dio.

THE COURT: What do you expect me to do at this point? You just heard Mr. Edelbaum. He knows and he says he knows what he's doing and that's that. He is intent upon pursuing this line of inquiry.

Isn't that what you said?

MR. EDELBAUM: Exactly.

THE COURT: I cannot possibly inhibit him. He is aware of all the facts, we have discussed it ad nauseam, and that's it.

MR. GOLDBERG: For the record, may I ask if he intends to pursue it and the prosecutor intends to go into it?

THE COURT: The prosecutor isn't required at this point to answer at all. If Mr. Edelbaum intends to pursue it, it is a matter within his own discretion.

MR. EDELBAUM: I said I intended to.

MR.GOLDBERG: I would want to move, then, for a severance.

THE COURT: Are you moving?

MR. GOLDBERG: I move.

THE COURT: Denied.

(In open court)

BY MR. EDELBAUM:

Q Do you remember an occasion in May of 1971 before the indictment was brought to this court against you and people on trial here and the others you meeting Mr. Ostrer with a Mr. H. Maurer as Mr. Ostrer came out of a Sargent Delicatessen on Third Avenue? Do you remember such an incident?

A No, I don't.

Q Do you remember saying to him that you were sorry for what you did to him?

A No, sir.

Q Do you remember him saying to you that you owed him nothing and he had nobody to blame but himself and that you told him that you had told your lawyer, Mr. Louis Nizer --

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q Did you tell Mr. Ostrer on that occasion that you had told your lawyer, Mr. Louis Nizer, that Mr. Ostrer was innocent and that he should give an affidavit -- have you give an affidavit to his lawyer? Did you tell that to Mr. --

A That is absolutely not so.

Q It didn't happen?

A Absolutely not so.

Q Now, did you tell us on direct examination that you told Mr. Ostrer about Belmont when the stock was $5 and you told him not to buy it at $5 but to wait until it got to 15, is that your testimony?

A Yes, sir.

Q You told him that?

A Yes, sir.

Q And when the time came it was 15 that was the time you set him up?

A Yes, sir.

Q Right?

A Yes, sir.

Q Mr. Goldberg asked you about your involvement --

MR. EDELBAUM: May I have this marked for identification, your Honor.

(Defendant Ostrer Exhibit M was marked for identification)

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Q I hold in my hand a memorandum turned over to me by the government dated January 8, 1973.

Now, with reference to that $150,000 stolen treasury bill, isn't it a fact that four or five years ago you acted as a middleman in an attempt to pass the $150,000 stolen treasury bill?

A I can't answer that question yes or no. The way Mr. Goldberg asked him I gave him the answer the best I could. If you would like me to explain I would be glad to explain it to you.

Q Were you arrested by New York County detectives?

A No, I was not.

Q Did you tell that to Mr. -- some Assistant District Attorney, United States Attorney?

A Did I tell him what, sir?

Q That you had been arrested?

A I was not arrested, sir.

MR. EDELBAUM: May I have a side bar?

(At the side bar)

MR. EDELBAUM: I was handed a memorandum which is now marked Ostrer's Exhibit M for identification which is a memorandum to Mr. McGuire from Mr. --

THE COURT: Keep your voice down.

MR. EDELBAUM: Which is a memorandum from Mr. Wing subject Hellerman, and it goes "In the course of several interviews Hellerman volunteered information which indicates his involvement in the following criminal activities."

There are enumerated eight activities. In the first paragraph there is a representation that Hellerman told somebody in the United States Attorney's office that Hellerman was arrested by New York County detectives inconnection with this thing.

MR. MC GUIRE: I think Mr. Edelbaum misreads the memorandum. That does not purport to be a precis of what Mr. Hellerman told anybody. It may be -- and I am guessing, frankly, now -- what somebody else told Mr. Wing, that Hellerman was arrested by New York County detectives.

MR. EDELBAUM: It puts me in a position being given a memorandum on which I rely that it is accurate when it is given to me and then when I question the witness the witness says it is not true. Where does that place me when the government makes a representation that that is what Mr. Hellerman told them, and that is exactly what is contained in thatpaper?

MR. GOLDBERG: Can't you offer it in evidence?

MR. EDELBAUM: I am going to.

MR. MC GUIRE: I might add, your Honor, that the document is obviously not competent evidence. If Mr. Edelbaum wishes to explore the question of arrest with Hellerman or Mr. Wing or with the New York County detectives --

MR. EDELBAUM: I am going to explore something further which is contained therein and I intend to go into it.

THE COURT: This is a very difficult decision because, as I read the memorandum, this does not necessarily mean that the matters which are contained here are statements actually made by Hellerman or whether the Assistant United States Attorney or anybody in their behalf who made this memorandum just put down observations, thoughts or extraneous knowledge that he might have had.

MR. EDELBAUM: The difficulty with that, your Honor, is that in the first paragraph, and how I have been misled, it says "In the course of several interviews Hellerman volunteered information which indicates his involvement in the following criminal activity,"

MR. MC GUIRE: As to the underlying criminal activity, your Honor, I don't think there is any question.

THE COURT: I don't think there is any question about that.

MR. EDELBAUM: Let me go further about that.

MR. MC GUIRE: The subject of arrest --

THE COURT: As a matter offact, if you think there is any such question about his having been arrested and whether his credibility as to this area is suspect, I hesitate to give you any advice because I think the arrest record is the best of all possible pieces of evidence.

When you look over any of the other documents, perhaps if it requires some exploratory discussion we ought to have that.

MR. EDELBAUM: Thank you very much.

(In open court)

BY MR. EDELBAUM:

Q In connection with that activity about the $150,000 stolen treasury bill, did you employ an investigator?

A Yes, I did.

Q Did you pay him some money?

A Yes, I did.

Q Did he advise you that it was used to take care of the cops on the case?

A Some of it, yes.

Q And you understood that that meant that you gave money freely to bribe a New York City policeman so you shouldn't be prosecuted in that criminal activity, isn't that correct?

A Three-quarters of the first part is correct, sir.

Q And do you expect that the United States Attorney's office will endeavor to help you to see to it that you won't be prosecuted for that activity? Do you expect that?

A Yes, sir.

Q When you bought that stolen credit card from Tony Soldano, did you use it to pay for Marty Roth's honeymoon cruise?

A Yes, sir.

Q And you used it -- when did you do that, Mr. Hellerman?

A I forget when Marty Roth was married. A year and a half ago?

Q I don't know. I am asking you.

A A year ago last summer, I believe. I don't know the exact date he was married.

Q It was during thetime that you have told us you earned $100,000 a year, is that right?

A That's correct, sir.

Q And you bought a stolen credit card to give a vacation to some lawyer friend of yours named Martin Roth, a honeymoon cruise, isn't that right?

A I can't answer that yes or no. You are putting in facts that are not so. Three-quarters of your facts are correct and one-quarter are not correct.

Q I will accept the three-quarters.

THE COURT: Of course, at this point we

don't know what three-quarters you are accepting.

MR. EDELBAUM: I withdraw the remark, Judge. Let the jury make the decision what he means.

Q Mr. Hellerman, you have purchased shares that you knew were stolen, isn't that right?

A Yes.

Q You have purchased dresses that you knew were stolen, isn't that right, sir?

A Yes.

Q You purchased jewelry that you knew was stolen jewelry, isn't that right?

A Yes.

Q Now, when you had this restaurant, didn't you bribe a union representative so that you could have labor peace, yes or no?

THE WITNESS: Excuse me one minute. May I speak to your Honor?

(At the side bar)

THE WINTESS: Again with the requirement Mr. McCuire said through you that I am not supposed to prejudice any of the defendants, I was to pay off the union representative but that was arranged by Mr. Dioguardi for me. He sat down and negotiated the labor settlement with the union.

MR. EDELBAUM: May he step away now while I say something?

THE COURT: Yes.

(Witness leaves)

MR. EDELBAUM: I am not asking him who. All I am asking is did he. The question of who arranged it is not relevant to this case. It is his criminal activity. So I see no problem there.

MR. GOLDBERG: May I point something out? Mr. Spied was allowed to stay on the jury when your Honor asked him -- juror No. 6 -- will you forgive me and let me start over.

He said he knew and had read about Mr. Dioguardi as a labor racketeer.

THE COURT: I am also aware of his responses and you didn't challenge him. You don't want to prevent Mr. Edelbaum from asking his question, do you, because there may be some inference and attachment to your client?

MR. GOLDBERG: I do.

THE COURT: I am sorry. If you have an objection, your objection is noted for the record and it is overruled.

MR. EDELBAUM: I don't see any problem.

The government is going to be permitted --

THE COURT: He is not anticipating this problem.

MR. GOLDBERG: I did not go into it on my direct.

THE COURT: That is not the problem he is talking about. He is talking about the overspill.

MR. EDELBAUM: And there is overspill on my client, too, Judge.

MR. GOLDBERG: I move for a severance at each of these junctures.

THE COURT: Denied.

(In open court)

THE COURT: Just answer the question yes or no. Do not offer any explanation.

MR. EDELBAUM: May we have the last question read.

(Record read)

A Yes.

Q And you knew that was a crime under the laws of the State of New York, did you not, to bribe a union official?

A I never thought about it.

Q And under the laws of the United Statesalso?

A I never thought about it, Mr. Edelbaum.

Q Never thought about it, all right.

Have you paid money to lawyers for the purpose of bribing a state liquor authority investigator, yes or no?

A Yes.

Q Have you paid money for the purpose of bribing state court judges?

A Yes.

Q And in another instance, have you paid money to bribe another union official?

A Yes.

Q One time did you help somebody to evade his income taxes by writing a corporate check to a fictitious paint company and then getting back in your pocket part of the cash proceeds of the check?

A Yes, sir.

MR. EDELBAUM: Would your Honor bear with me just a moment?

(Pause)

Q Mr. Hellerman, isn't it a fact that Mr. Ostrer after you set him up to buy stock told you he didn't have the money to pay for it, yes or no?

A Would you please repeat the question?

(Question read)

A I can't answer that question yes or no, Mr. Edelbaum.

Q Did there come a time when he told you he didn't have the money to pay for it?

A Yes.

Q As a matter of fact, the 5000 shares thatyou bought for him from Bruce & Company he didn't pay for, is that right? I am talking right at the start.

A No, he didn't pay for the stock, no.

Q As a matter of faot, you told him that you would advance the money forhim, didn't you?

A I can't answer that question yes or no, Mr. Edelbaum. I would be glad to explain it.

Q Just listen to my questions and answer the questions that you can and just keep doing what you are doing if you can't answer the question yes or no, Mr. Hellerman.

You told us about a $60,000 check that you got from a bank, a bank check, without giving the bank a dollar, right?.

A Yes, sir.

Q You knew that was improper, didn't you, when you got it?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q You knew that was illegal when you got it, didn't you?

MR. MC GUIRE: Objection.

THE COURT: Sustained.

Q You didn't give -- who did you get it from?

A I testified Amboy Savings & Loan, Mr. Patras.

Q And you didn't pay the bank a dollar for the check at that time, did you?

A What do you mean pay them? You mean for that particular check?

Q Yes, for that particular check.

A No, I didn't.

Q And that check was given to Bruce Halpern, right?

A Yes.

Q That check was stopped by the bank?

A Yes, sir.

Q Isn't it a fact, to your knowledge, that Bruce Halpern came up to Mr, Ostrer and said, "What's going on kre? I'm ruined. I wasn't paid for that. Look what happened, I got a stop check."

To your knowledge that happened, is that right?

A Mr. Halpern went to see Mr. Ostrer a lot about not paying for his stock, yes.

Q Isn't it a fact that Mr. Ostrer gave him back the shares of stock which you had given him from Bruce Halpern and which he had gotten from Bruce Halpern, don't you know that?

A I don't know that, no.

Q And you do know that Mr. Ostrer, not having the money, interested some friends of his to advance the money and buy it as a joint venture with Mr. Ostrer guaranteeing them against losses, isn't that right?

MR. MC GUIRE: Objection as to form.

THE COURT: Sustained.

Q Did he tell you that?

MR. MC GUIRE: Objection to the form.

THE COURT: Sustained.

Q Did you know -- question withdrawn.

you told on direct examination about Fred Flatteu?

A Yes.

Q What do you know about Fred Flatteu and Mr. Ostrer in connection with Belmont?

A I was sitting in a lawyer's office, Sam Weissman, who was a friend of the Flatteus and I know that Mr.

Flatteu dialed because Mr. Weissman got a call from somebody in the family that they were having a problem collecting the money from Mr. Ostrer and they didn't know how to settle the estate that Mr. Ostrer had showed or made a deal with Mr. Flatteu.

Q How do you know about Lee Evans?

A I don't know how many shares or if the transaction went through. Mr. Ostrer mentioned Lee Evans to me, he mentioned Harry Morse to me, he mentioned a man with a K, a Kaufman or something like that, but I don't know how many shares he actually sold each one, if in fact he did sell them, if he got proceeds from them or what. The only one I know is I heard the conversation of Sam Weissman with someone in the Flatteu family.

Q Very well. Tell me this. You say you guaranteed Mr. Ostrer's loss?

A Yes,sir.

Q And you were to get 50 per cent of the profits?

A Yes, sir.

Q And you do know -- do you know that in the transactions with Evans, with Flatteu and Mr. Morse, Mr. Ostrer had made written agreements with respect to him sharing 50 per cent of theprofits with Mr. Morse --

MR. MC GUIRE: I object to the question in this form.

THE COURT: Objection sustained.

MR. MC GUIRE: It is a speech, not a question.

THE COURT: I am having some difficulty understanding the question myself.

MR. EDELBAUM: All right, your Honor, I will try to make it plainer. I am sorry.

Q Do you know that Mr. Ostrer entered into an arrangement with a Mr. Lee Evans whereby Mr. Evans advanced the money for the purchase of the stock and Mr. Ostrer was to guarantee the losses and only share in the profits, do you know that?

A Mr. Ostrer and Mr. DiLorenze told me --

Q Mr. DiLorenzo?

A Yes, told me.

THE COURT: What is your answer?

THE WITNESS: Mr. Ostrer and Hickey DiLorenzo told me Mr. Ostrer did this.

Q And this was after he had lost all the money, not before, isn't that right?

A I don't understand the question.

Q You were told this aftet the stock fell out of bed, as they say, isn't that right?

A No. The night we made the deal. I didn't know which people or what kind of pressure that Louie was under to give back --

THE WITNESS: Your Honor --

MR. EDELBAUM: Question withdrawn.

THE COURT: Question withdrawn.

Q How much money altogether do you owe on all the guarantees in connection -- that you made in connection with the sale of Belmont stock?

MR. MC GUIRE: I object to that question. It calls for a legal conclusion of this witness.

THE COURT: Sustained.

Q Do you know how much was lost by the people you set up to buy the Belmont stock?

MR. MC GUIRE: Objection to the form of this question. It assumes these people were innocent.

THE COURT: Objection sustained.

Q Tell me the names of the people you put into the Belmont stock, you set up to buy Belmont stock. Give me one by one. Just give me one and then stop. I want to ask you some quetions about that one.

A Louis Lew.

Q How much did he pay for the stock?

A $15 a share.

Q How many shares of stock?

A I don't remember.

Q Approximately?

A Around 500 shares, I think.

Q That is $7500?

A Yes.

Q Did he ever sell that stock, yes or no?

A I believe he did, sir.

Q Did he sell it at a profit or a loss?

A I believe at a profit.

Q Give me the next person.

A Walter Bodenstein.

Q How many shares of stock?

A 500 shares.

Q At how much?

A $15 a share.

Q $7500?

A Yes.

Q Did he sell it at a profit or a loss?

A A profit, sir.

Q Tell me the names of any people that you sold -- introduced to buy stock that remained with the stock when the stock fell out of bed. Tell me those people.

A I will start with my brother-in-law, Joel Goldfarb.

Q How many shares did you induce Joel Goldfarb, your brother-in-law, to buy?

A 1100 shares.

Q When you say your brother-in-law, is that your present brother-in-law?

A Yes.

Q How much did he pay for the stock?

A $15 -- approximately $15 a share.

Q That's some $16,500?

A Right, maybe more.

Q Did he remain with the stock?

A He lost all his money, yes.

Q Did you pay it back to him?

A Did I pay it back to him?

Q Yes or no.

A Yes.

Q Allof it?

A Yes.

Q Give me the name of the next one?

A Steve Drourr.

Q How many shares of stock?

A A thousand shares.

Q And how much did he pay for it?

A $15 a share.

Q Who is Mr. Steve Drourr?

A A customer of mine.

Q A customer of yours?

A In the restaurant and someone I went to high school with.

Q Did he remain with the stock?

A As far as I know, yes.

Q And he lost --

A All the money, as far as I know.

Q Did you pay him back?

A No, sir.

Q That is the first one you told us about you didn't pay back, right?

A The first one.

Q Tell us the next one.

A Bruce Halpern didn't get paid back.

Q Bruce Halpern was somebody that you used in this deal, isn't that right?

MR. MC GUIRE: I object to the characterization.

THE COURT: Sustained.

Q This is somebody that knew about what was happening, that the stock was going to be jiggled?

A Everybody knew that, Mr. Edelbaum.

Q All your customers?

A Every single one of my customers knew that.

Q All illegally?

A Everybody knew that.

MR. MC GUIRE: I object to the characterization.

THE COURT: Sustained.

Q Will you tell me the names of other customers who bought stock, customers or friends?

A Ann Messing.

Q How many shares did she buy?

A A couple of hundred, I think.

Q Did she ever sell the stock?

A I believe so, sir. I am not sure.

Q Who else?

A Charlie Donae.

Q How many shares of stock?

A A hundred, I think, or two hundred. I don't remember.

Q All together you collected between 200 and $250,000?

A Correct, sir.

Q Is that right?

A Yes, sir.

Q Was that on the $5 a share on the original?

A Yes, sir.

Q Plus half the profits on the others?

A Yes, sir.

Q Now, you have told us about the crimes that you committed in the past five years -- am I being inaccurate about the time?

A It is five years; it is about five years.

Q In your mind as you sit there when you complete

928

your two-year sentence, whether you are paroled under that B sentence or have to serve most of the two years or all of the two years, you expect never to be prosecuted again for all of these criminal acts you hve told us about? Is that right?

A Yes, sir.

Q You have made a promise not to engage again in any other criminal activity? Is that right?

A Yes, sir.

Q You made that promise before, did you not, when you first cooperated with the government? Isn't that right?

A Yes, it is, sir.

Q And you promptly broke it? Right?

A Yes, sir.

MR. EDELBAUM: I have no further questions.

MR. MC GUIRE: Might I have just a second, your Honor?

THE COURT: Ladies and gentlemen, while we are waiting, would it be very onerous -- and be very candid with me -- if we start tomorrow at 9 o'clock?

THE FOREMAN: We have several jurors on the panel that come from up-state and they have to make two trains. They try to get in, and then the subways are slow, and they feel it very hard.

THE COURT: 9:30.

REDIRECT EXAMINATION

BY MR. MC GUIRE:

Q Mr. Hellerman, during cross examination you have told us extensively of your expectations with respect to further prosecution for criminal activities? Is that right, sir?

A Yes, sir.

Q You have told us that your lawyers made an arrangement with the government? Is that correct, sir?

A Yes, sir.

Q Now, was that arrangement oral or was it reduced to writing?

MR. EDELBAUM: Your Honor, may we have a side bar?

THE COURT: Well, he can certainly answer this question before we have the side bar.

MR. EDELBAUM: Yes, sir.

A It was put to writing, sir.

(At the side bar.)

MR. EDELBAUM: I would like an offer of proof. He is holding a document.

MR. MC GUIRE: I am holding in my hand a copy of the memorandum of agreement signed by this witness on

October 19, 1972, and we propose to offer it in evidence and examine the witness with respect to the circumstances that led up to it.

THE COURT: I think the first step is to have it marked for identification. Don't you think so?

MR. MC GUIRE: Yes, sir.

THE COURT: Have it marked for identification.

MR. MC GUIRE: May it be marked as Government's Exhibit 200.

xx (Government's Exhibit 200 was marked for identification.)

MR. GOLDBERG: Don't you think we ought to have a full argument? This is crucial.

MR. EDELBAUM: This is going to be oneof the most crucial parts of the trial.

(In open court.)

THE COURT: Since this conference is going to consume some time, I see no point in standing by. We will suspend for the day and resume tomorrow morning at 9:30. I mind you to keep my admonition very definitely in mind. Have a good night, ladies and gentlemen.

(Jury excused.)

(In the robing room.)

MR. MC GUIRE: Does your Honor have a copy of the agreement?

THE COURT: No, but I have it pretty well in mind, including the "whereas" clauses and exactly what is contained. Perhaps it would be better if I had a copy while I heard you.

MR. MC GUIRE: I have one clean copy. That is Exhibit 200.

THE COURT: You keep it. I don't need it.

MR. MC GUIRE: Whether by the offer and receipt of this agreement or by my pursuit in redirect examination of the substance of this agreement, the government thinks it is entitled by way of rehabilitating this witness to show, in fact, he has not worked one monumental con job on the government, as the thrust of the cross examination from beginning to end attempted to demonstrate. The government has not entered into an unconscionable deal with him, as the cross examination from beginning to end has attempted to demonstrate. In fact, the government has been put on trial during the course of the entire day today and anybody that says to the contrary is mouthing an absurdity in my view.

The government believes it is entitled to put the full scope of the agreement between self and Hellerman into the record of this case, so that the jury may judge the entire course of events for itself.

MR. GOLDBERG: May I be heard?

MR. EDELBAUM: Just a minute.

MR. GOLDBERG: I am the lawyer for the first named defendant.

THE COURT: Not yet.

What is your offer of proof?

MR. MC GUIRE: I offer Government's Exhibit 200 in evidence.

THE COURT: Assuming it is received and assuming you now proceed with redirect examination concerning the substance of this agreement, what would be your line of questioning? Because I assume, in no event, would you make the offer you just indicated in shorthand form, "I offer this in evidence," only; you would then expect to continue by asking questions about it.

MR. MC GUIRE: Yes, sir, and I would expect to be entitled to be able to review with Hellerman from start to finish his participation.

THE COURT: What would be the line of your inquiry on redirect?

MR. MC GUIRE: The line of my inquiry?

THE COURT: Let me go to the heart of it and simplify this thing: Do you see any need for including the

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t6/2 pm

contents of the subject of the "whereas" clauses?

MR. MC GUIRE: The first "whereas" clause, your Honor, has to do with Hellerman's acknowledging his criminal past and is going to undertake to make efforts towards restitution to victims of his crime, to commit no crimes in the future, and to testify truthfully before the grand jury and/or at trial in any case in which he is requested to testify.

I see nothing objectionable in that.

THE COURT: Very well.

MR. GOLDBERG: Your Honor, the first clause bothers --

THE COURT: Mr. Goldberg, you are so impatient. You have been given more opportunity to talk and talk and talk. You will get your turn. It is hard to compete with a Tower of Babel.

MR. GOLDBERG: I apologize.

THE COURT: You do this all the time.

MR. MC GUIRE: I expect it is proper for me to elicit testimony from this witness concerning the third whereas paragraph, to the effect that Hellerman has knowledge of events and individuals which if disclosed would be of significant assistance in those investigations, and I would propose to be able to develop that Hellerman was the first in many instances to inform any governmental authority about many of the crimes as to which he has admitted on the stand his participation.

THE COURT: What bout the "whereas" clause, the first paragraph, page 2?

MR. MC GUIRE: Yo - Honor, that deals with Hellerman's fear for his life. I really don't know how to treat that and I will say honestly and frankly to the Court that this troubles me very deeply. I think that in asking this witness to testify about his own motivations and his own character, which are on trial here, the fact that this witness has, for example, had his house machine-gunned is of such crucial significance to him and is so significant on the issue of the truth or falsity of his testimony that it cannot be escaped. This man is afraid that if he does not tell the truth he is a dead man. It is as simple as that. And he seeks the protection of the government to that end.

And on the issue of whether he has told the truth on this witness stand, it seems to me that we can't escape that fact.

THE COURT: Let me ask you a question: Are you prepared to say that based on the testimony which has been adduced concerning Hellerman that you have a Cirillo situation?

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MR. MC GUIRE: The situation is not like Cirillo, obviously. It is perfectly clear that here the witness is not being asked to explain, except in a very limited manner, prior inconsistent statements which he has made.

Now, Mr Edelbaum did bring out a few of those. The witness has testified on the stand that Ostrer was heavily involved in the stock manipulation, he has admitted to Mr. Edelbaum that on a prior occasion he told somebody else that Ostrer was not involved in some way or other. I do not know whether if asked the witness would say that he gave that response at the time out of fear. I have not discussed the subject with him, but I suspect that he would.

THE COURT: What if you were permitted to ask that question?

MR. MC GUIRE: Well, I am certainly entitled to ask that question, I think. I think there is no doubt at all under the law that I am entitled to ask the reasons why he gave that statement.

THE COURT: I have no doubt, either.

MR. MC GUIRE: That is clearly covered by Cirillo.

THE COURT: What ifit is something else that is not associated with fear? Then you definitely don't have a Cirillo situation.

MR. MC GUIRE: That is true. But the basic question here is the credibility of this witness.

THE COURT: There is a more basic question, perhaps, or one equally basic. Let's assume for the purpose of this discussion that you are allowed to interrogate Mr. Hellerman on redirect concerning the contents of this written agreement without including the "whereas" clause concerning fear, wouldn't that be sufficient? Or would you be prepared by virtue of one more question to risk this entire trial in an area definitely at this moment which is No Man's Land?

MR. MC GUIRE: It's a question that I would really prefer to sleep on overnight. I don't think legal research is going to be of the slightest bit of good here.

THE COURT: If it does you some good, let me know about it, because I only know Cirillo that bears on this.

MR. GOLDBERG: May I speak for the first named defendant? And why I jumped up, you had asked the United States Attorney where there is any problem with the first paragraph. He said no, that it only --

THE COURT: It also has a statement in it that involves organized crime.

MR. GOLDBERG: I have great respect for the United States Attorney and for Mr. Mc Guire, but I think in fairness to his office he should have mentioned that to your

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Honor when you called upon him. That is my only concern, because I take Mr. Mc Guire at his word, and that was a matter that you should have known about.

THE COURT: I knew about it.

MR. GOLDBERG: But he didn't know youknew about it.

THE COURT: Let us not waste any time on that. Are there any legal arguments?

MR. GOLDBERG: The first paragraph is somehhing, with all due respect, the first "whereas" clause is something that concerns me, in addition to the third that your Honor has talked about. I think you said the third has to do with fear. The first has to do with organized crime, which your Honor had not mentioned, nor had Mr. Mc Guire, until we got into this colloquy, and I object to the first paragraph and to the third paragraph. I have no problem with respect to the document without reference to organized crime characters and fear of his life.

Other than that, there is no problem with the document.

t6/3 pm

MR. EDELBAUM: Your Honor, first of all, I was never so careful in my life as to not to ask a single question about this document, and I resent Mr. Mc Guire saying that the defendants opened up the door plural. I never asked a single question about promises by the government. Every question I asked was his expectation, never went into any deals, never talked about that at all.

Now, first of all, it would be outrageous to include the first paragraph:

"Whereas, Michael Hellerman has been involved in various past criminal activities with members of organized crime, and is now willing to acknowledge his criminal past."

First of all, these paragraphs are self-serving declarations of Mr. Hellerman right here, and to admit into evidence this paragraph is ridiculous, that Michael Hellerman will testify truthfully before the grand jury and/or at trial in any case in which he is requested to testify. That to be read in to support his credibility is unheard of. The persons to determine his credibility are this jury, from what they heard in this courtroom, and no stature should be lent by a written agreement that because he promised the government in a written document, formal written document, that he will testify truthfully, that that will give support to his tetimony that it is truthful. I never heard of such an offer. I think Mr. Mc Guire besides sleeping on this ought to consult with some of his superiors and appellate lawyers in the office, who will perhaps be better acquainted to advise him of his position and not to wreck a trial by having this document introduced. I want to win this case here, and I don't want to it in an appellate court, Judge, and I think for this document to be offered in evidence after I didn't ask a single question about it would be outrageous.

I might call your Honor's attention that on the record there has been no ruling as yet on my motion, which your Honor reserved until I submitted my memorandum, to strike the entire testimony.

THE COURT: I will decide the motion right now. The motion is denied.

MR. EDELBAUM: I respectfully except.

MR. GOLDBERG: The record will show when you thought I was getting into an area that was dangerous you called me, or Mr. Mc Guire suggested a bench conference, and you said, "If you persist, you are treading on dangerous grounds," and I desisted, and I did not disobey your instructions to me. I didn't ask him what the government promised him or what he promised the government.

THE COURT: Well, I think I have heard all the argument that you care to make on this point. I think we have some hard core decisions to make. So we will convene tomorrow before we commence with the jury, about 9 or 9:10.

I will give you some indication off the top of my head, so you can mull about that. I don't think under any circumstances at this point on rehabilitation that there is any basis for offering this document, because testimony in connection with this document would be cumulative, one way or the other, and, accordingly, I see no need for that.

I see no reason why you can't be permitted on redirect to explore some areas of this subject of agreement between Mr. Hellerman and the defendant.

I understood you to say, although you did not say it precisely -- at least, this is what I think you said or meant to say or meant to infer -- and that the government was not involved in a deal with the defendant to induce him by improper means to give false testimony, which is the impression you feel has been left.

MR. MC GUIRE: The record speaks much more eloquently.

MR. EDELBAUM: If Mr. Mc Guire will point to one question that I asked in my examination that can support that contention, I will withdraw all my objections -- one question, not two, one. He gets the record; your Honor gets the record.

THE COURT: There is a difference in the scope of cross examination. There is no doubt about that.

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MR. MC GUIRE: No question. But the fact is that the witness' credibility has been called very seriously into question.

MR. EDELBAUM: That happens in every case.

MR. MC GUIRE: And the central position that I take is that the government is entitled to pursue this witness' reasons for telling the truth.

THE COURT: I have given you just some of my thoughts from the top of my head, and I make this suggestion to you, Mr. Mc Guire: In preparing for your redirect see if you can lay out in structure your questions so that you can accomplish the essential, the substantive purpose of rehabilitation, without inviting serious danger of irreparable prejudice.

MR. MC GUIRE: I think your Honor knows very well that the last thing I want to do in this trial is invite reversible error.

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(Discussion off the record.)

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THE COURT: I have the report of Dr. Blitzman. I will read it and then turn it over to counsel and they can examine it and then we will mark it for identification.

(Pause.)

THE COURT: Mark this for identification and then each of you may familiarize yourself with its contents and I would like to indicate that the doctor has also submitted a tape of the EKG which you will mark together with his report. Dr. Blitzman is a Diplomate of the American Board of Internal Medicine and a Fellow of the American College of Cardiology.

(Court Exhibit 2 was marked for identification.)

THE COURT: It is my understanding he is a member of the staff of Beth Israel Medical Center.

(Pause.)

MR. GOLDBERG: May I speak?

THE COURT: Yes.

MR. GOLDBERG: An examination of the report shows to me that the witness has no dependent edema, that his lungs are clear, resonant, no fluid in the lungs, that his heart has a regular rhythm, that his pulse and blood pressure are normal, that there are no masses in his neck and , of importance, his extremities show no dependent edema.

The doctor does not come up with any positive finding, I feel based on his report, that would suggest that this witness cannot presently undergo examination.

THE COURT: Are you prepared to ignore his opinion in the last paragraph of this letter?

MR. GOLDBERG: I can only say that the findings do not support the claim --

THE COURT: In your opinion?

MR. GOLDBERG: I can only speak of my opinion. I know what the findings are. I am not going to make an opinion. My position is that the patient has given a history to the doctor. The doctor does not report he has seen any of the prior records of the patient or examined any of the hospital history records of this patient nor that he has conferred with the patient's doctor in Bangor, Maine by telephone or otherwise. The patient was admitted to the hospital with an acute attack in February of 1972. He recovered from that, and as late as July, 1972, after his release from the hospital, he was questioned by a Judge of this court privately by telephone and was found by the Judge, Judge Pierce, to be fit despite that attack of February, 1972, to come to court, and Judge Pierce did not issue or order a deposition. Nothing in this report talked about anything other than another hospitalization in March of 1972, all this before Judge Pierce explored this issue.

Now, I don't find anything in here, your Honor, with all due respect, though I looked for it, and I may have missed it, with respect to any difficulty he had following his testimony in the first - in the Marty Roth trial, which was a couple of months ago. There is nothing recited in this report to show any positive complaints by this patient-witness after Judge Pierce made a finding in July or August of 1972 that he was fit and able to come to court. This talks about his condition and his hospitalization prior to that.

In addition, an examination of the report will show that except for the conclusion that he is fit to testify not under intensive cross examination and without the presence of the jury, it seems to me it is just not supported by the laboratory or the diagnostic tests which find the heart not at all enlarged and no fluid in the lungs and the blood pressure normal.

MR. EDELBAUM: I am dealing only with the conclusion. In dealing with the conclusion, I respectfully urge your Honor there is insufficient for your Honor to issue the order requested by the government for the following reason:

He says "He is still experiencing episodes of angina pectoris," which is a very common ailment among many people and they take nitroglycerine pills if they have pain.

Then he says "No patient is fairly well compensated" -- which mean there has been a good recovery from the myocardial infarction shown -- "I believe a prolonged and intensive cross examination would be harmful to him."

I assure your Honor there will not be a prolonged and intensive cross examination. It will be done with everything in mind about his condition because I, above everybody else, would not want a tragedy to occur in the courtroom.

THE COURT: What if it does? Will you go home and weep?

MR. EDELBAUM: What if it does while we have it right here.

THE COURT: That is not an answer.

MR. EDELBAUM: We can have the same doctor in attendance that we would have here.

Furthermore, this is the final conclusion:

"However, he should be able to withstand interrogation, cross examination and discussion in a calm and formal hearing without a jury being present."

Now, this doctor is not an advocate, he is not a lawyer. We have no knowledge of what transpired, that he has any knowledge of what is going to happen. If lawyers are alerted, Judge, to treat this man the way he should be treated, without anything further I must respectfully object to this.

THE COURT: Let us see if we can get some specifics. How long would your direct examination take?

MR. SCHAFFER: I would anticipate it would be no lon than a half hour.

THE COURT: How long would your cross examination take?

MR. EDELBAUM: I would say if it is a half hour -- I am sorry.

MR. GOLDBERG: A half hour to 45 minutes..

THE COURT: Or an hour?

MR. GOLDBERG: 45 minutes, your Honor.

MR. EDELBAUM: Probably not more than a half hour, your Honor.

MR. GOLDBERG: I should alert your Honor to the fact that he had some difficulty with convictions of crimes w might upset him in disclosing them. He has a criminal record and was in on the stock manipulations of Imperial and Belmont. That is a problem that would have to be explored by the defense. He can't be treated as though he were some impartial sort of expert witness.

THE COURT: Does this mean it may go beyond 45 minutes?

MR. GOLDBERG: No. It may go into areas that might disturb him.

THE COURT: Does this also mean it might go beyond 45 minutes?

MR. GOLDBERT: Yes, it might go beyond 45 minutes.

THE COURT: Then your estimate is not a valid one necessarily?

MR. GOLDBERG: It is my best estimate.

MR. EDELBAUM: We could take a 5-minute recess in between so that he can calm himself. These things can be done.

THE COURT: Mr. Edelbaum, I know all the things that can be done. Please don't give me a lecture about the options.

MR. EDELBAUM: They are not lectures, they were suggestions.

THE COURT: You are not a doctor, I am not a doctor and Mr. Goldberg is not a physician. This is an objective, experienced, highly qualified cardiologist and I can't strike down his conclusions very readily and take the risk that you are willing to assume. Unfortunately, we have to take some risks with this man's life, but I don't look forward gwbr

with any great relish to the possibility that he might suffer severe and irreparable damage, including the loss o life.

So at this moment, it is my thought to have him examined on direct and cross examination in the absence of the jury under the circumstances and conditions that I hav set forth.

MR. EDELBAUM: I respectfully except.

MR. GOLDBERG: I needn't except. My objection is noted.

THE COURT: The letter is marked for identificat and will speak for itself.

ME.EDELBAUM: Yes, sir.

MR. MC GUIRE: May we have the appropriate certification from the Attorney General marked as an exhibit?.

MR. EDELBAUM: May I see it?

MR. SCHAFFER: If I might state for the record, this certification from the Attorney General's office came over the Thermofax machine at 26 Federal Plaza, so it does not appear as a typewritten original, it appears as a Thermofax which came up by wire.

MR. EDELBAUM: I have no quarrel about that. I w like to look at 3503.

(Pause.)

MR. EDELBAUM: I have no further comment.

THE COURT: I should also like to mark Dr. Meltzer's letter for identification.

xx (Court Exhibit 3 was marked for identification.)

MR. GOLDBERG: May I be heard?

THE COURT: You may.

MR. GOLDBERG: I have made reference to statements to Judge Pierce.

THE COURT: I don't have the competence here. I don't think it has any bearing: I think it is completely out of order. Any decision Judge Pierce made I am sure is entirely within his sound discretion and based upon the facts as they appeared before him and I have absolutely no concern with that decision in another case.

MR. GOLDBERG: I wasn't seeking to bind your Honor.

THE COURT: I see no reason for making these statements. I am not going to examine Judge Pierce's decision, Judge Pierce's rulings. I don't know in what context they were made and I see no reason why you clutter the record with that.

MR. GOLDBERG: Only because Judge Pierce cited what Dr. Meltzer told him. I was not citing it for the binding effect, just for the fact in his conversations with Dr. Meltzer, that is all.

MR. EDELBAUM: May I examine Dr. Meltzer's letter?

THE COURT: You may.

(Government's Exhibit 201 was marked for identification.)

THE COURT: Is there anything further?

MR. EDELBAUM: No, your Honor.

MR. MC GUIRE: There is one other matter, your Honor. I am sorry. That is marking and turning over certain 3500 material.

Mr. Schaffer has left the robing room for the purpose of procuring and turning over to defense counsel certain prior statements and testimony of the government's next proposed witness, who is Bruce Halpern.

This material falls into two classifications. Government's Exhibit 3509 is a transcript of Halpern's grand jury testimony given on March 9, 1971.

3510 is a transcript is a transcript of his grand jury testimony given on May 5, 1971.

The government is perfectly willing to furnish these documents to counsel for perusal in the courthouse but in accordance with our prior understanding the government would request that the Court adhere to its earlier ruling that this material not be removed from the courthouse.

THE COURT: Is this one of the four or five crucial witnesses that you talked about earlier?

MR. MC GUIRE: I would say so, yes, your Honor.

Exhibit 3511 is a transcript of Halpern's examination before the Securities and Exchange Commission on September 10, 1970. That transcript consists of some 157 pages. Although the government would ordinarily consider this confidential material because of the circumstances under which it was taken, in view of its bulk and in order to move the proceedings along we wouldn't have any objection to counsel removing that from the building for the purpose of studying it overnight, if they wish.

THE COURT: Very well.

MR. MC GUIRE: Exhibit 3512 is a transcript of Halpern's testimony at a prior trial in this courthouse. I believe that counsel are already familiar with it but we are turning it over, in any event. It is testimony given at the trial of one Harvey Pollak which occurred last summer before your Honor.

THE COURT: Correct.

MR. MC GUIRE: Exhibit 3513 and 3514 are my notes with respect to conversations had with Halpern on May 17th and October 2, 1972. I have no objection to counsel taking those notes from the courthouse.

Exhibit 3515 is a transcript of Halpern's testimony in the Soldano trial which took place in October of this year in this courthouse. It is a matter of public record and couns have it, I am sure, but, in any event, the government would not be adverse to turning over copies since we have copies.

THE COURT: That is the trial that took place before Judge Knapp?

MR. MC GUIRE: That's right. The defendants on trial there were Anthony Soldano, Richard Greenberg and Gary Fredericks.

MR. EDELBAUM: Off the record.

(Discussion off the record.)

THE COURT: How many other witnesses do you expect after Bruce Halpern?

MR. MC GUIRE: Your Honor, I am going to consult this evening with Mr. Schaffer and with other members of our staff. It may be that after Halpern we may have as few as one more witness.

THE COURT: Exclusive of Kelsey?

MR. MC GUIRE: Exclusive of Kelsey. It may be that we will want to call three, four, five or six more, some of whom will be primarily for the purpose of putting in documents that are corroborative of the statements made by various other witnesses. I will hope to be able to indicate more precisely tomorrow morning to Court and counsel what direction we are going to take, but I don't want to make this decision now.

MR. EDELBAUM: In any event, the government couldn't rest before Monday.

THE COURT: I would say that is probably a reasonable estimate.

MR. EDELBAUM: Because of the fact that the deposition taken on Friday, will have to be read to the jury on Monday.

THE COURT: If we talk about approximately half an hour for each of you and 45 minutes for Mr. Goldberg, it shouldn't take that long to read it to the jury.

MR. EDELBAUM: So that with the other witnesses he is talking about, we could possibly finish on Monday or Tuesday.

MR. MC GUIRE: Could very well.

MR. EDELBAUM: So that I can antiicpate that the earliest that I wouldbe required to proceed with my defense would be Tuesday morning?

THE COURT: You can anticipate it but if by any chance the government finishes on Monday they will just be finished on Monday and we will go ahead.

THE COURT: I will play it by ear.

MR. MC GUIRE: We would expect to be able to adduce all Halpern's testimony tomorrow and perhaps some additional witnesses as well.

THE COURT: In any event, we see the end of the tunn for your case?

MR.MC GUIRE: Yes, your Honor. It is perfectly obvious now that Hellerman was our major witness.

THE COURT: Then there is a fair chance we may be able to send this case to the jury next week, either Wednesday or Thursday or probably Friday?

MR. MC GUIRE: Depending on the length of the defense, your Honor.

THE COURT: So it is out of season to ask you whethe you expect to put Mr. Dioguardi on the stand?

MR. GOLDBERT: I don't expect to put the defendant Dioguardi on the stand.

THE COURT: Do you expect to have any other defense witnesses?

MR. GOLDBERG: I do not.

MR. EDELBAUM: I will probably put Mr. Ostrer on the stand.

THE COURT: Any other defense witnesses?

MR. EDELBAUM: Yes, your Honor.

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THE COURT: Many?

MR. EDELBAUM: Let me see. Three or four will be short and probably four character witnesses.

THE COURT: That should be short.

MR. EDELBAUM: Yes. Off the record.

(Discussion off the record.)

MR. SCHAFFER: Your Honor, I might add in looking over their 3500 material Mr. Mc Guire put on the record I noticed an oversight. There is some material in my handwriting with the witness Bruce Halpern which have been omitted which I will provide the first thing tomorrow morning.

THE COURT: All right, 9 o'clock tomorrow.

(Adjourned to Thursday, January 11, 1973, at 9:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Michael Hellerman (Resumed)		654	824	

EXHIBIT INDEX

Court	Identification	In Evidence
1	644	
2	837	
3	844	
Defendant Dioguardi		
B	707	
Government		
200	825	
201	845	
Defendant Ostrer		
G	765	
H	772	
I	772	
J	772	
K	778	
L	778	
M	802	

957

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

JOHN [illegible] and
LOUIS [illegible]

Defendants

Before:
HON. DAVID N. EDELSTEIN, D.J.
and a Jury.

71 Cr. 55[illegible]

852 — 954

5

655-7
680
687
867
877-9
937
938-45

New York, January 11, 1973

STENOGRAPHER'S MINUTES

Missing 955

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

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United States of America

v.

71 Cr. 558

John Dioguardi and Louis Ostrer

New York, January 11, 1973
9:10 a.m.

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(Trial resumed.)

(In the robing room.)

MR. MC GUIRE: I had told the Court I would have two things to report on this morning. The first would be my best guess as to the length of the case, and the next would be my thoughts as to the redirect.

Which would you prefer to hear first?

THE COURT: Well, if you have a statement, I would appreciate it.

MR. MC GUIRE: My best estimate right now is the government ought to be finished with this case by the close of business Monday.

MR. GOLDBERG: If Mr. Edelbaum contemplates a defense for Ostrer, which I do not for my client, would it be possible to submit my contentions Monday morning.

THE COURT: Yes.

MR. EDELBAUM: I will have it on Monday, too, your Honor.

MR. MC GUIRE: As to redirect examination, your Honor, I have consulted with my lawyers, and my lawyers informme that I probably could if I pushed it properly get the entire terms of the Hellerman government agreement in evidence, the theory being that the question of the witness' motivation has been sufficiently raised by the constant questioning on cross to the effect that the witness has a motive to testify falsely because of the various promises which by implication have been made to him by the government. The implication I speak of is the implication raised by questions, such as, "You don't expect to be prosecuted for that crime?" repeated conservatively 15 times during the cross examination. I don't propose, however, to go into all of the agreement. In excess of caution, I don't think I need it.

I will restrict myself to those portions of the agreement which do not concern Hellerman's fears, nor any mention of organized crime. I don't propose, however, to go through a preview of what I do propose to do.

MR. GOLDBERG: May I be heard? On such an area as this that is sensitive, when Mr. Mc Guire says he does not propose to go through what he intends to deal with on redirect, should not we out of an abundance of caution request, as I am now requesting, an offer of proof?

THE COURT: You may request it. I will not instruct him.

MR. EDELBAUM: I won't be sleeping and I will be watching very alertly. Mr. Mc Guire is a responsible and experienced Assistant United States Attorney, he is not a novice, and if any questions are asked which result in a wrecking of this trial, he is the one that is responsible for it.

THE COURT: Well,that is very gratuitous and very kind of you to say that. I know who will be responsible for wrecking the trial. Trials are not very readily nor easily wrecked. I think I was sleeping, however, the other day when I allowed you to enlist my sympathy and declare Saturday an off day. I completely ignored my own problems, my own schedule, and if we had worked Saturday we could hav e been finished by the 17th.

MR. EDELBAUM: Your Honor told me yesterday that it was not primarily for my problem that you decided not to work Saturday, may I remind you.

THE COURT: Well, I would have been willing to override the problems of the jury.

MR. EDELBAUM: Are you going to change your mind again?

THE COURT: I might.

MR. EDELBAUM: Judge, I don't think that is very fair and --

THE COURT: I don't want to argue about it.

MR. EDELBAUM: -- because, Judge, I have already taken your word and made further commitments.

THE COURT: All right, you will not get it again about anything.

MR. EDELBAUM: I can't understand why you are doing this.

THE COURT: I am sorry I took Saturday off. There was no reason for it at all, as I see it now. I said it, and that will be it. But you will not get my word or indication about anything at any time for any purpose.

MR. EDELBAUM: Are you saying that I impose on you?

THE COURT: I am saying this, that you told me about your terrible physical condition, only to tell me that on Saturday you have to fly back and forth to Florida because you have a meeting of 150 people. That is hardly compatible with a condition of not being very well. In other words, what I am saying, if anybody can fly --

MR. EDELBAUM: I hoodwinked you? Is that what you are telling me?

THE COURT: I didn't say that.

MR. EDELBAUM: That is what you are implying.

THE COURT: I am not arguing --

MR. EDELBAUM: I don't like what you are saying.

THE COURT: That is too bad. The record is clear, completely clear, that you have been telling me that you can't work late.

MR. EDELBAUM: I can't work late. If you want me to be examined by a cardiologist, I will submit to an examination.

THE COURT: I don't want you examined. Let us go on and finish the trial, and it's not going to be 4:30, it is going to be scheduled as I see best and fit.

MR. EDELBAUM: You mean this afternoon I am not going to be excused?

THE COURT: Yes, you said you have a doctor's appointment, and that is it.

MR. MC GUIRE: Shall we stay?

THE COURT: I am finished.

MR. EDELBAUM: Thank you.

(Recess.)

MR. MC GUIRE: A few minutes ago Mr. Edelbaum in the courtroom complained of feeling a little dizzy and your Honor instructed the court clerk to call a nurse and I accompanied Mr. Edelbaum to the medical facility in the building. There in my presence the nurse took his blood pressure and his pulse, and his blood pressure had evidently risen to 195 over 90. His pulse was relatively normal, he had a rate of 80, but she said it had some irregularities and suggested that Mr. Edelbaum call his cardiologist, which he did in my presence.

It is my understanding that the cardiologist, Dr. Rosenfeld, told Mr. Edelbaum that he would be best advised to rest for an hour or so before attempting to continue with the trial, and, accordingly, I have left Mr. Edelbaum down in the nurse's care where I have told him that I will return in an hour to see how he is feeling.

MR. SCHAFFER: I might take this opportunity-- I know Mr. Edelbaum is not here and I will desist if your Honor feels it is not appropriate to do so at this time -- that I have furnished defense counsel this morning government's 3516 for identification which was my handwritten notes relating to the witness Bruce Halpern, which I had neglected to bring yesterday afternoon.

THE COURT: You can repeat that later.

MR. MC GUIRE: I think it is clear enough that that material was furnished to Mr. Edelbaum.

MR. GOLDBERG: May I ask a question?

THE COURT: Surely.

MR. GOLDBERG: You recall I had asked Mr. McGuire to furnish a list of those matters under investigation by the government with respect to Hellerman. I have information that there might be another one, perhaps it has been overlooked. Might I just ask your Honor through Mr. McGuire, I will accept his representation, Atlantic Services or some company of that nature, is that under investigation by the SEC or government in connection with a stock fraud?

MR. MC GUIRE: The same is familiar to me, your Honor, and that is a matter which is a part, as I understand it, of another one of the criminal enterprises that Mr. Hellerman has already described from the stand.

MR. GOLDBERG: It's covered by some other stock fraud that we discussed?

MR. MC GUIRE: Yes, that is my understanding.

MR. GOLDBERG: That is satisfactory, your Honor.

THE COURT: We will repeat these two matters that have been placed on the record when Mr. Edelbaum is available.

(Recess)

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(In the robing room at 11 o'clock a.m. with all counsel present.)

THE COURT: I would like to call your attention to two matters: One regarding the turnover of documents by the government to you and Mr. Goldberg. Mr. Goldberg has acknowledged receipt.

Have you received your document?

MR. EDELBAUM: Yes.

THE COURT: And the other was an inquiry by Mr. Goldberg concerning another investigation, and that was Atlantic Services.

I prefer that you state your response to it again.

MR. MC GUIRE: Mr. Goldberg inquired about a matter which had come to his attention in one way or another, in which he inquired of the government whether Mr. Hellerman had been criminally involved to our knowledge. The matter he referred to as Atlantic Services without stating any conclusions as to whether Hellerman, in fact, was criminally involved in that, or any other matter, I can say for the record that the subject has been under investigation and that it is my understanding that Hellerman covered it in his testimony under another name.

MR. GOLDBERG: Satisfactory to the defendant,

967

your Honor.

MR. EDELBAUM: I don't know what another name means.

MR. MC GUIRE: Well, the Atlantic Services matter is an investigation as to which Hellerman testified and as to which the government supplied some background information to defense counsel. It is one of the investigations listed among the 18 or 20 which we have informed counsel and the Court about.

If memory serves me, it is a part of the Computer Mico Data situation, but I am not entirely sure that is the one. I am not familiar personally with all of this.

MR. EDELBAUM: Are you saying that Atlantic Services is another name for something we have already gotten as to some misconduct?

MR. MC GUIRE: Yes.

THE COURT: Can you identify which one it is?

MR. MC GUIRE: My understanding, it is the Computer Mico Data situation, but my recollection may possibly be in error.

MR. EDELBAUM: Could you check it and be sure it is not another one?

MR. MC GUIRE: I will check during the luncheon recess to make sure.

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MR. EDELBAUM: That will be satisfactory.

THE COURT: Anything further?

MR. EDELBAUM: No.

THE COURT: We will proceed.

(In open court; jury present.)

MICHAEL C. HELLERMAN, resumed.

THE CLERK: Court has been in session since 9 o'clock. Please be seated.

THE COURT: Again, my apologies for the delay. Because of matters involved in this case, you will not be required to sit tomorrow. We shall resume again Monday morning at 9:30.

MR. MC GUIRE: May I proceed, your Honor.

THE CLERK: Mr. Hellerman, may I remind you you are still under oath.

THE WITNESS: Yes.

REDIRECT EXAMINATION

BY MR. MC GUIRE:

Q When we broke yesterday, Mr. Hellerman, I asked you whether an agreement as to which you testified aboutwith the government was oral or in writing. Did you answer that question, sir?

A I think so. It was in writing, sir.

Q Now, you were questioned on cross examination about your expectations as to whether you would be prosecuted in connection with certain criminal activities which you said you had committed? Do you remember that line of cross examination?

A Yes, I do, sir.

Q Now, sir, can you tell this Court and jury what your expectations in that regard are?

A Well, the agreement that my attorneys and I signed with the government --

MR. GOLDBERG: I object to this, your Honor.

THE COURT: Overruled,

A -- the agreement that my attorneys and I --

MR. EDELBAUM: May we have an understanding when a lawyer makes an objection it inures to the benefit of the other lawyer, without my rising and joining in the objection?

THE COURT: Would you prefer that?

MR.EDELBAUM: Yes.

THE COURT: But you don't join in every objection?

MR. EDELBAUM: When I don't, I will say so.

THE COURT: Very well.

A (Continuing) My attorneys signed, worked out an agreement --

MR. EDELBAUM: I don't hear the witness.

A -- my attorneys worked out --

MR. GOLDBERG: I object "worked out".

THE COURT: Yes.

Q Did you sign an agreement?

A Yes, sir.

Q Are your expectations based on that agreement in part?

A Yes, sir.

Q Now, in accordance with that agreement or in any other one has the government promised that it will never prosecute you on all of the cases as to which you gave testimony yesterday?

A No.

Q Has the government made any representations or promises to you?

A Only what is contained in the agreement, sir.

Q Now, sir, are those representations conditioned on anything?

A Yes, they are, sir.

Q Can you tell us what you have promised to do in return?

MR. EDELBAUM: I object, your Honor.

THE COURT: Overruled.

MR. GOLDBERG: I join in that.

THE COURT: Overruled.

A I promised that I wouldnever break the law again in any manner, shape or form, and if I ever did break the law the government had a right to prosecute me for any of the cases that the understanding was that I would not be prosecuted, they would have a rightto go back and prosecute me in every one of the cases, and they warned me they would to the fullest extent of the law if I broke the law or d anything that was wrong any more, they warned me --

MR. EDELBAUM: I am sorry. I cannot hear the witness, and I think I must hear the witness.

THE COURT: I agree with you.

THE WITNESS: I apologize.

MR. EDELBAUM: May we have the reporter read it, because I didn't hear what the witness said.

THE COURT: Yes.

(Answer read.)

THE COURT: Did you complete your answer?

THE WITNESS: Yes. They warned me that if I did one thing wrong that to the fullest extent of the law I would be prosecuted.

Q Now, did you undertake to do anything else, Mr. Hellerman?

A Yes, sir.

Q By the way, when was this agreement entered into?

MR. EDELBAUM: Can I have, your Honor, a continual line of objections to any questions about this agreement?

THE COURT: You may.

MR. EDELBAUM: Thank you. So I won't interrupt Mr. McGuire.

MR. GOLDBERG: May I have the same, your Honor?

THE COURT: You may.

Q Do you remember when it was entered into?

A I believe September of 1972.

Q Is your recollection accurate on that point?

A Fairly; I think fairly.

Q Are you certain?

A No, I am not certain, but around that time.

MR. GOLDBERG: I will take the government's representation, your Honor, if it will move it along.

Q Will anything serve to refresh your recollection?

A If there is a date on the agreement.

Q I would like to show you what has been marked as Government's Exhibit 200 for identification. Will you look at the last page and tell us if that refreshes your recollection?

A Yes, it does, sir.

Q Now, when did you enter into that agreement?

A In October of 1972.

Q You were going to tell us, Mr. Hellerman, whether you undertook to do anything else as a result of -- I will withdraw it and rephrase that question.

You were going to tell us whether you promised to do anything else in connection with that agreement?

A Yes, I did, sir.

Q What did you promise to do?

A I promised to make restitution of one hundred thousand dollars. I have already made restitution of $12,500.

MR. EDELBAUM: I --

A I already made restitution of $12,500 and when

I get out of jail and I get a job as best I could afford I will make the restitution up to $100,000.

I also promised to cooperate with the government and be available to testify when the government asked me to on any previous criminal activities that I engaged in or that I have knowledge of.

Q Now, is it your understanding that --

MR. EDELBAUM: I object to the form of the question as far as it has gone.

MR. GOLDBERG: I object as well, strictly as to form.

MR. MC GUIRE: We are talking about this witness' state of mind.

THE COURT: I will allow it.

Q Is it your understanding in accordance with that agreement that anything would happen should it be shown you testified falsely?

MR. EDELBAUM: Your Honor, I object to the question and I would like a side bar in connection with that.

(At the side bar)

MR EDELBAUM: Your Honor, in view of that question I move for the withdrawal of a juror and a mistrial --

MR. GOLDBERG: I join in it.

MR. EDELBAUM: -- on the ground that what the government is attempting to do is put the weight of the government as certifying that this witness is telling the truth because he is here in the courtroom. The government has made a written agreement with him that if he doesn't tell the truth, that is the implication, he will be prosecuted. So it is taking away from the jury the very burden they have to assess the credibility of the witness by putting the weight of the government behind -- under this guise of this written agreement that the government would not put him on the stand unless they were convinced he told the truth. And they have him here and I have never heard of such athing as is being attempted by the government to do this. I press the motion with all sincerity.

THE COURT: Despite the fact that no answer was given?

MR. EDELBAUM: Yes, your Honor, because the implication has already been before this jury that the weight of the government, by the very question suggested by Mr. McGuire.

MR. GOLDBERG: May I be heard.

THE COURT: Yes.

MR. GOLDBERG: With the form of the question and the contents thereof, the government has vouched for the credibility of this witness by putting him on the stand, because it's part of the agreement that he wouldn't testify falsely or be free from the risk of prosecution unless the government had determined that he was testifying falsely. He has evidence on my cross that he has no expectation of being prosecuted presently and those two things lead to one conclusion, that the government has come toa decision that he is testifying truthfully. To that extent the government has injected its own credibility into the case and I ask for the declaration of a mistrial.

MR. MC GUIRE: May I be heard, your Honor?

THE COURT: Surely.

MR. MC GUIRE: The question was very carefully framed to probe the witness' state of mind and that state of mind only. I am mindful of the fact that the government should not put its own credibility in issue in vouching for a witness and it's my sincere and serious contention that in no way has the government done that by asking this question and I think the question is proper and can be answered.

THE COURT: Would you repeat the question, please.

(Question read)

MR. EDELBAUM: Might I say, your Honor, may I respectfully remind your Honor that during our discussion yesterday as to whether or not there was going to be the introduction of this instrument before the jury, I pointedly pointed out the particular paragraph in there which deals with this and brought to your Honor's attention my contention that this would be improper for the very reasons I am raising now.

THE COURT: I think the question is improper. In any event, it treads on very dangerous territory. I have no clear view of what the ruling should be, but I think in the interest of caution I am going to strike that question. Perhaps you can rephrase it, but the question as it is framed and stated for the record I think is improper.

MR. MC GUIRE: Very well, your Honor.

MR. EDELBAUM: Your Honor, of course I know your Honor will instruct the jury to disregard it when you strike it, but in view of your Honor's statement that he should perhaps rephrase it, I don't know what that means and I would like -- I think in the interest of caution I would like an offer on the record of what the question is going to be.

THE COURT: Do you expect to pursue this?

MR. MC GUIRE: Well, I think I can ask, your Honor, whether it is the witness' understanding that he is required to testify truthfully.

THE COURT: I will allow that.

MR. GOLDBERG: May I be heard?

THE COURT: Sure.

MR. GOLDBERG: I think the question if framed whether it is his understanding pursuant to the oath that he must testify truthfully is appropriate, but if it is left up in the air as to whether it is his understanding with respect to the agreement, you get right back to the problem.

MR. EDELBAUM: I think the question is very bad when it is asked after a question like is being stricken out, to follow that. There is an implication that it must be in the agreement. We are going in the back door when we shouldn't go in the front door.

THE COURT: I will allow it with the additional language to be incorporated in that question, "Pursuant to his oath," as suggested by Mr. Goldberg.

(In open court)

THE COURT: The last question, ladies and gentlemen, is stricken and I am sure you will recall that on frequent occasions I admonished you to strike from your mind and your recollection and completely and for all purposes any questions or answers that are stricken and for that matter any questions that are objected to and sustained you would also strike that completely from your memory, and I have every confidence that you will abide by my admonition.

MR. EDELBAUM: Your Honor, I think, I think we overlooked something on the record.

(At the side bar)

MR. EDELBAUM: I don't think your Honor acted on our motions.

THE COURT: Denied.

MR. EDELBAUM: Exception, your Honor.

(In open court)

BY MR. MC GUIRE:

Q Mr. Hellerman, is it your understanding pursuant to the terms of your oath that you are required to testify truthfully?

A Yes, sir.

Q To the best of your knowledge, have you done so?

MR. EDELBAUM: I object to that.

THE COURT: Sustained.

Q Mr. Hellerman, are there contained within the agreement that you made with the government other terms about which you have not testified?

MR. EDELBAUM: I object to it. That is wholly improper, and I object to it.

THE COURT: Sustained.

Q When were you sentenced, Mr. Hellerman?

A November 6, 1972.

Q To your knowledge, was the agreement that you had with the government brought to the attention of the sentencing judge?

MR. GOLDBERG: I object.

MR. EDELBAUM: I object, your Honor.

THE COURT: Sustained.

Q What sentence did you receive?

A Two years in prison and I was placed on probation for five years effective from the release of my confinement.

Q And what is your understanding of the terms of your probation, Mr. Hellerman?

MR. EDELBAUM: I object to it, your Honor. It is irrelevant to the issues in this case.

Q Apart from that, the defendant's understanding would not have any relevancy here.

MR. MC GUIRE: It seems to me, your Honor, the door was opened.

MR. GOLDBERG: I object to the comment that the door was opened. I would like to be heard on an argument.

(At the side bar)

THE COURT: First let me state my recollection. If the door has been opened on any area in this particular field, it dealt with parole, is my recollection.

MR. MC GUIRE: It dealt with --

MR. GOLDBERG: You cautioned me about what his expectation was about parole.

THE COURT: You had developed quite aline of questioning on parole.

MR. GOLDBERG: Not post parole. He asked that.

THE COURT: We can check the record and we may have to do precisely that. That is my recollection. I have no recollection of any questions concerning probation. Am I in error?

MR. MC GUIRE: No, you are not in error on that precisely, your Honor, your recollection is quite correct. However, the entire subject of sentencing was brought up and the implication was very clearly left with this jury that the defendant got a break in sentencing as a result of an unconscionable deal that was made by the government. I think I am entitled to explore that.

THE COURT: Well, just thinking out loud for the moment, if that area should be exposed and developed, I think it would better come by expert testimony rather than based upon his understanding. If the matter of probation --

MR. MC GUIRE: He knows what the conditions of his parole are, your Honor.

MR. GOLDBERG: May I be heard?

MR. MC GUIRE: I don't mean parole; I mean probation.

THE COURT: I think there is perhaps another possibility if I ruled that it is proper, and that is to introduce the conviction itself, which sets forth the sentence, since that's been discussed ad nauseam, may I say, and also indicates all the other conditions relevant to this two years.

MR. MC GUIRE: Very well, your Honor, I would accept that.

MR. EDELBAUM: Your Honor is going to

introduce -- I am at a loss -- going to introduce the minutes of sentence.

THE COURT: No, I am not going to introduce the minutes of sentence. That is not what I said. I said the judgment of conviction.

MR. EDELBAUM: How would that be relevant on this issue?

THE COURT: Because the area of sentence has been discussed, cross-examined and he has testified pursuant to questions that he has been given a two-year sentence and five years probation and there have been questions concerning parole and I think it would be entirely proper to introduce this as a public document and one that is on file with the clerk of the court.

MR. GOLDBERG: May I be heard?

THE COURT: Surely.

MR. GOLDBERG: The question of sentence and what he received was first brought out by the prosecutor on direct. He went into that, I might remind your Honor of that. That came in on direct. I am not then to be faulted for going into it on cross. He is the first one who elicited from him are you presently confined, are you in jail on a two-year sentence, and is it not my obligation to show the two-year sentence is either

983

an A -- most respectfully, your Honor, Mr. Hellerman gave us the particular section.

THE COURT: Should the government choose to offer in evidence the judgment of conviction, I will receive it over objection.

MR. EDELBAUM: You have our objection.

THE COURT: You may.

(In open court)

MR. GOLDBERG: Your Honor, is the last question withdrawn?

THE COURT: The last question was withdrawn.

BY MR. MC GUIRE:

Q Mr. Hellerman, when did you first furnish information to the government concerning this Belmont Franchising Corporation?

MR. EDELBAUM: Objected to.

THE COURT: I will allow it.

A Approximately two years ago.

Q Was that before or after the indictment in the case, to the best of your recollection?

A. I can't remember whether it was before or after, sir.

Q Was it right around the time of the indictment?

MR. EDELBAUM: I object to it.

THE COURT: I didn't hear that.

Q Was it right around the time of the indictment?

MR. EDELBAUM: Objection.

THE COURT: Sustained.

Q Is there anything that would refresh your recollection as to when you first gave information?

MR. GOLDBERG: I object. He hasn't indicated that his recollection needs refreshing.

MR. MC GUIRE: I beg your pardon.

THE COURT: Do you have any recollection of when you first gave information to the government concerning Belmont, whether it was before or after the indictment?

THE WITNESS: I know where --

THE COURT: Did you hear my question? Do you have any recollection?

THE WITNESS: Of the date, sir?

THE COURT: Yes, as to the time when you first gave the government any information concerning Belmont Franchising.

THE WITNESS: Approximately two years ago, a year and three quarters ago.

THE COURT: Can you fix it more definitely?

Can you fix the time more definitely?

THE WITNESS: No, I can't, your Honor.

MR. MC GUIRE: That is sufficient.

Q Approximately a year and three quarters or two years ago?

A Yes, sir.

Q That would be during late 1970 or early 1971?

A Yes, sir.

Q Now, Mr. Edelbaum asked you a question on cross-examination dealing with an incident which took place, which you said took place in this courthouse. Do you recall that, sir?

A I recall the incident, sir.

Q Can you remember when that incident took place?

A I cannot remember when. I can just remember it happened in Judge Edelstein's court -- right outside Judge Edelstein's courtroom but I don't remember the date.

Q Can you give us your best approximation of the date?

A It was one ofthe times the defendants were in front of Judge Edelstein, and I believe it was only two times, but I don't know the exact date but I remember the incident.

Q Would June of 1971 refresh your recollection, sir?

A It doesn't. I just don't know. I remember the incident, I remember what happened. I just don't know the date.

Q Now, you say this incident took place outside Judge Edelstein's courtroom?

A Yes, sir.

Q Can you tell us who was present?

A All the defendants were out in the hall. It was during a break or before court started or if there was a break in the proceedings --

MR. GOLDBERG: Your Honor, might I ask for a conference? This is a new line of inquiry and I have something to bring to the Court's attention.

THE COURT: You have what?

MR. GOLDBERG: Something to bring to the Court's attention, mostrespectfully.

(At the side bar.)

MR. GOLDBERG: May I proceed?

THE COURT: You may.

MR. GOLDBERG: What I wish to bring to the Court's attention is the following: This is a post conspiracy statement elicited by Mr. Edelbaum, and his explanation for having given the post conspiracy statement should be taken as binding only on the defendant Ostrer, since it is an exculpatory statement and not binding on the defendant Dioguardi.

MR. MC GUIRE: Very well.

MR. GOLDBERG: I ask the Court to instruct the jury that this is being received only against the defendant Ostrer.

THE COURT: I will do so at an appropriate time.

MR.GOLDBERG: The appropriate time is now, I suggest.

THE COURT: There has been no prejudice so far; there has been no answer.

MR. MC GUIRE: I anticipate this line of questioning will develop from the witness, that the defendant Ostrer came to him and said, in substance, "Johnny told me you would give me a letter which would absolve me from responsibility in this matter."

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MR. EDELBAUM: I have a very serious problem. Am I alleged to be present at that time?

MR. MC GUIRE: No, sir.

MR. GOLDBERG: Nor am I?

MR. MC GUIRE: No.

MR. EDELBAUM: Because, if so, it would be a very difficult problem. I don't want to be placed in the position of being a witness in this case.

MR. MC GUIRE: No, I have no expectation that the witness would so testify.

MR. GOLDBERG: Does that go for both counsel?

MR. MC GUIRE: Of course.

MR. GOLDBERG: Your Honor, notwithstanding Mr. Mc Guire conceding that this is not binding on the defendant Dioguardi, it, nevertheless, has a great deal of built-in prejudice, where he says that Dioguardi post termination of the conspiracy has made this statement.

MR. MC GUIRE: I have been placed in an extremely difficult position by this question and answer which were posed to the witness by the defendant Ostrer. What Mr. Goldberg is referring to, I suppose, is a potential Bruton problem here.

MR. EDELBAUM: Right.

MR. GOLDBERG: If your Honor remembers, I approache the bench and told your Honor and Mr. Edelbaum about the dangers and asked for a severance at that time.

MR. EDELBAUM: The inquiry I made was not in the courthouse; it was on the steps of the courthouse in the presence of Mr. Winn at 9:30 in the morning. I gave the time. They were about to enter for an arraignment. I asked him nothing about what transpired in the courthouse. I did not want to offer proof as to that, because that would place me as a witness.

The one incident we talked about was on June 1st at 9:30 in the morning on the steps of the courthouse as the defendant and Mr.Winn, who appeared at the time of the arraignment, and another gentlmen, who would be a witness at the time it was said. That was the only inquiry I made about that. And the other inquiry I did make was something at a restaurant, as Mr. Ostrer came out of Sarge's Delicatessen.

MR. GOLDBERG: Will you permit me to say something that Mr. Mc Guire has properly brought closer to home when he mentioned Bruton, which is something I really had in mind without pressing the case. Bruton and the Second Circuit had talked in terms if it is an exculpatory statement it is not so harmful to a defendant when it is made post arrest, but this would show consciousness of guilt.

This would be very damaging to the defendant Dioguardi, yet it is not binding on him, it is not part of the conspiracy. It is after the termination of the conspiracy, and it can be considered by the jury as to consciousness of guilt not only as to Ostrer, but as to Dioguardi, if they believed that Johnny had said, "Do this," and Ostrer's statements at this point are not binding on the defendant Dioguardi.

MR. MC GUIRE: That is perfectly true.

THE COURT: I am going to strike the question.

MR. MC GUIRE: Will you allow me to pursue this line of inquiry?

THE COURT: Perhaps instead of wasting any more time comg back and forth, can you indicate what the line of the inquiry is going to be, so we don't have any more of these side bar conferences than are absolutely necessary?

MR. MC GUIRE: The witness is prepared to offer an explanation as to why he said certain things indicating that he would furnish the defendant Ostrer with a letter indicating his innocence in the matter, and his explanation is basically that he was saying those things in order to attempt to keep his cover intact, that he had been acting for some time and was continuing to act as an undercover source of information for the government.

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THE COURT: Now, this line of inquiry will not elicit any answer in any way intruding Mr. Dioguardi's name as I understand,

MR. MC GUIRE: As the witness remembers it, Ostrer came to him and said, "Johnny said I could get a letter from you."

Now, if your Honor wants to instruct the witness in that connection not to mention Johnny's name, I am sure he will abide by that instruction. But I think at least with that excision --

THE COURT: With that excision there is certai no Bruton problem.

MR. GOLDBERG: Conceded.

MR. EDELBAUM: The witness should be alerted. Let's have a recess.

THE COURT: Would you instruct him pursuant to my communication about that?

MR. MC GUIRE: Yes.

THE COURT: The reason I take that measure, I just don't want to continue to impress him with my presenc in a direct way.

MR. EDELBAUM: Mr. Mc Guire, in the interest of caution he is not going to say "Somebody told me," something like that, because the implication is still there. As to latter part which you said, that he didn't want to blow his cover, of course, there is no objection to that. But anything other than that, I think you ought to caution him.

THE COURT: I think we have pretty much shown an awareness of the Bruton pitfalls here, and I would expect during the recess that you caution Mr. Hellerman. As indicated in the past, he has understood these cautions and he has adhered to them very carefully.

MR. GOLDBERG: So that I won't burden you with needless remarks, I ask for a cautionary instruction after his answer.

Or should I put it on the record now? I ask that once he asks this question, before the answer is given Mr. Mc Guire should state that this is offered solely with respect to the defendant Ostrer. I think that is the practice.

THE COURT: I think that is entirely an obligation for the government here.

What I would expect you to do by issuing the precautionary statement to the jury, is to follow the precautionary statement as stated in Cirillo, that these statements are being offered solely for the purpose of explaining away any inconsistencies on cross examination.

MR.MC GUIRE: Very right, your Honor.

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THE COURT: Correct?

MR. MC GUIRE: Yes, exactly so.

(In open court.)

THE COURT: We will take a brief recess, ladies and gnetlemen.

(Recess.)

(In open court)

BY MR. MC GUIRE:

Q Before we recessed, Mr. Hellerman, I was adking you about an incident that took place in the courthouse. Do you remember that, sir?

A Yes, sir.

Q Now, can you tell us who was present at the time this incident took place?

A Well, I was standing outside Judge Edelstein's courtroom on the righthand side and all the defendants were different groups talking to each other, and Mr. Ostrer came over to me with two or three gentlemen I didn't recognize -- I can describe them, two of them anyway, but I didn't know who they were, and Mr. Ostrer asked me --

Q Just a moment, Mr. Hellerman. Did Mr. Ostrer say anything to do?

A Yes, he did.

MR. MC GUIRE: This testimony, your Honor, is being offered only against the defendant Ostrer.

A Mr. Ostrer asked me if I would give him a letter.

Q Did you respond to that question?

A Yes, I did. I said I would give him a

letter.

Q Did you discuss the terms of the letter that Mr. Ostrer asked for?

A Mr. Ostrer wanted a letter exonerating him from any blame in the deal, and I said I would give him such a letter. After I said that, Louie left from where he was, went across the hall and went to speak to Johnny and then Johnny nodded his head and -- looked at me and nodded his head.

MR. EDELBAUM: Your Honor --

MR. GOLDBERG: Your Honor, I would ask for a side bar.

(At the side bar)

MR. GOLDBERG: I move for the withdrawal of a juror and the declaration of a mistrial. I think that this goes counter to your Honor's instruction. I would suggest to your Honor that there be no indication of the conversation between Ostrer and the defendant or the witn-ss Hellerman. This statement of nodding of one's head is not the kind of affirmative conduct where there has been a showing of any statement which would have warranted the nodding of a head. That hasn't been brought to the attention of the Court, what the conversation was between Ostrer and Dioguardi sufficinet for your Honor to consider it as an affirmative intentional act by Dioguardi expressing a willingness that there be any conduct or action on the part of Hellerman which would justify receiving it as an admission against the defendant Dioguardi.

Absent there being any showing of what took place between Ostrer and Dioguardi, I submit that the implication or the introduction of it leaves the jury to speculate in a highly prejudicial area, and I would say that Mr. McGuire, having made the statement that this is going to be received only against the defendant Ostrer, had an obligation prior to embarking on this to alert the Court to this added bit of testimony by Hellerman because I think it's prejudicial to the defendant Dioguardi and it should have been brought to our attention so that it could have been fully explored since it is in the same family of objection as noted prior to the recess and we wouldn't have had to be at he side bar again.

MR. EDELBAUM: It is contrary to your Honor's direction. It is getting in by indirection. It is tying my client up as if Mr. Dio had ordered this, an organized crime figure. It's very prejudicial. I know it not to be a fact, but I don't want to get in as a witness. I made no inquiry about what happened upstairs. There is no point in my putting into the record what actually happened and I am not going to because I have never been a witness in a case that I tried and I don't intend to do it as long as I live.

So, your Honor, I think this whole thing should be stricken.

MR. GOLDBERG: Would your Honor want me to desist? May I go further?

THE COURT: Yes, if you wish.

MR. GOLDBERG: What troubles me, your Honor, is if this is to be introduced as an implied admission on part of Dioguardi, then it should be received not only as to Ostrer but as to Ostrer and Dioguardi. But Mr. McGuire made a representation at our conference that it would be received only against Ostrer and he made that declaration to the jury a moment ago. He thereby confirmed our belief that there was no conduct of Dioguardi that would be admissible. Otherwise he wouldn't have made that statement to your Honor prior to the recess and the statement in front of the jury now. It comes as a surprise to me that he would elicit this without alerting your Honor to the problems and to defense counsel.

I don't want to get into a personality problem, but I am surprised and I say that injects prejudice into this case of a Bruton nature and there has been no showing that it was in response to any statement of Ostrer that's been disxlosed to this Court in the conversation with Dioguardi that could give your Honor any basis for saying it should be received against Dioguardi.

And with Mr. McGuire's limitation having been exceeded that it is only with respect to Ostrer it should be received, the injection of Dioguardi is an attempt to evade what I thought was your Honor's ruling that we were to tread with great care, not involve Dioguardi in this, even to the extent, your Honor, I believe you cautioned him about using the word "someone" out of an abundance of caution, that Hellerman should say he was asked by someone, so the jury wouldn't speculate it was Dioguardi, and Mr. McGuire said he would instruct his witness to do so. Now he went further.

THE COURT: I didn't give any instruction about "someone." You mentioned that.

MR. MC GUIRE: May I be heard?

THE COURT: Have you completed?

MR. GOLDBERG: May I have one second, your Honor?

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(Pause)

MR. GOLDBERG: It also in some way -- nothing that I have done has opened the door to the Cirillo problem of rehabilitation since I did not impeach the witness with respect to this whole area, your Honor, as you well know. So I shouldn't have to bear the brunt of this kind of inquiry which is received only with respect to a defendant who has sought to undercut the credibility of a government witness by bringing a prior inconsistent statement or a prior exculpatory statement into evidence. I didn't elicit that and Cirillo has no application to the defendant Dioguardi. I thought there was some agreement somewhere along those lines.

MR. EDELBAUM: I just want to add to the record, so the record will be perfectly clear, that this question came after the Court granted a recess in the interest of caution and after Mr. McGuire had the opportunity, availed himself of the opportunity of speaking for the witness to give him cautionary guidance before the witness resumed the stand. I think the record should be perfectly clear that that happened. I know it is clear your Honor gave him the opportunity, but I would like the record to be clear that he availed himself of the opportunity before he asked this question.

MR. MC GUIRE: If the Court please, the conversation between Ostrer and this witness is offered solely as against the witness Ostrer. However, it was not the government's intention to offer this subsequent conduct of both of these defendants which the government introduced as admissions by both of them showing consciousness of guilt as against only one. The witness in substance ran away with the question. I intended to ask a separate question and to make it perfectly clear that this subsequent conduct would be offered as against both defendants.

MR. GOLDBERG: May I be heard on that?

MR. MC GUIRE: It is perfectly clear to me that regardless of the Bruton problem contained in the conversation the subsequent conduct of the two men in company with each other is and should be admissible against both. It is not different from any other kind of admission of guilt.

MR. GOLDBERG; This is redirect and it is in response to doors opened on cross examination. This is offered, I believe, under the Cirillo principle to rehabilitate a witness whose credibility has been attacked. WE are not on the redirect, if that is the purpose for which Mr. Mc Guire is offering. He is offering it not to rehabilitate a witness, which is a proper subject of redirect, but he is offering this as affirmative proof perhaps a subject on direct. I would like your Honor to take notice of United States against Fantuzzi decided by the Second Circuit where there were comments made by someone that were overheard but it was not clear that the person to whom the remarks were addressed understood what was being said or took any action which showed any affirmative response to the particular comment of the declarant.

The Court said that it could not be received as conduct suggesting an admission unless there was an awareness or a showing of what the particular response of the defendant was and the remarks made to him by the declarant.

In this case it is true you have affirmative conduct of Dioguardi nodding in affirmance, but there is nothing in evidence to show what Ostrer said to Dioguardi that wouldcause him to nod, and I think Fantuzzi stands for the proposition that both parties must be shown in order to warrant an admission by conduct, A, it must show what statements were addressed to the witness and, B, the witness response in connection therewith sufficient to convince you that it was an intentional affirmance of a particular piece of conduct.

Here you don't have any proof overheard by Hellerman of Ostrer's statements to Dioguardi. The jury is left to speculate on that score in addition to not being a proper subject of redirect.

MR. EDELBAUM: In addition to that, as I understand Mr. Mc Guire now, this is being offered as an affirmative proof of conduct which shows consciousness of guilt in a rebuttal and there are many cases which hold that that is improper in rebuttal, that if that was to be offered as consciousness of guilt it shoud have been offered in the direct case and not in the rebuttal from this witness.

In addition to that, how does anybody know that Mr. -- here are all the defendants standing around. Mr. Ostrer goes back and says something to Mr. Dioguardi. He nods his head. He could have said, "It's a nice morning." There must be some otherevidence to show what was said. There can't be an inference from that that Mr. Dioguardi told him to ask that question, because he is getting in by indirection what was prohibited and I am amazed that this was done without consulting with your Honor beforehand in vi of our discussion which was very clear on the record as to what he was going to do.

In join in Mr. Goldberg's motion for a mistrial.

THE COURT: Will you address yourself to the last prong of the argument which is twofold: One, that this is improper redirect and, two, that the nod is entirely too remote from the incident of Mr. Ostrer's conversation with Mr. Dioguardi, and by that I mean so remote that it can't even be cured by a charge involving circumstantial evidence?

Do you think we ought to recess?

MR. MC GUIRE: I don't think it is necessary.

It seems to me that the nature of the conduct of Ostrer here in going directly to Dioguardi and saying something to him and having Dioguardi --

THE COURT: You are taking the last first?

MR. MC GUIRE: Yes, sir.

It seems that that conduct is sufficiently able to be explored testimonially so that it lends perfectly proper and appropriate circumstantial inference that it was the immediately previous discussion that was the subject of conversation between Dioguardi and Ostrer. No proof, of course, can be mathematically certain and I think counsel would be perfectly within their rights to explore that subject on cross examination if they wished to.

On the subject of whether or not this is improper redirect examination, it is perfectly clear to me, your Honor, that I could not have adduced this sequence of events on direct examination because the subject which opened the door had not yet been raised by Mr. Edelbaum. But, in any event, assuming that it could have been brought up on direct examination, I believe it is within your Honor's discretion to allow direct examination of a witness to be reopened to allow the interests of justice to be furthered and I suggest that if counsel wish to explore this subject on cross examination they be given a good deal of latitude to do so.

THE COURT: Anything further?

MR. EDELBAUM: No, your Honor. I don't think that I have to answer that last thing because the cases are all clearly against such a --

THE COURT: I am going to take a brief recess. I would like to digest this.. I would like you to come in when I call upon you and reread portions of this argument should I have any need for it.

(In open court.)

THE COURT: Ladies and gentlemen, we will recess early for lunch now. It is ten minutes past twelve and we will resume again at approximately twelve minutes after two.

MR. GOLDBERG: Are we excused, your Honor?

THE COURT: You are excused.

I would ask you to be available in the court at about a quarter or twenty minutes past one.

(Luncheon recess.)

AFTERNOON SESSION

1:35 p.m.

(In the robing room.)

THE COURT: Does anybody wish to be heard further?

MR. GOLDBERG: I do not.

MR. MC GUIRE: No.

MR. EDELBAUM: No.

THE COURT: You cited Fantuzzi?

MR.GOLDBERG: Yes.

THE COURT: I don't know why you cited that for. Perhaps your reading of the case and my reading are at variance. I can't see that the case you cited is appropriate. I have the case here. So unless you want to be heard further about that case, I will move on.

MR. GOLDBERG: Move on, most respectfully.

MR. EDELBAUM: I have my position on the record.

THE COURT: Yes, you have your position on the record, and I think we ought to deal with your position on the record, particularly as it relates to the questions asked by you of Mr. Hellerman concerning his volunteering statements to Ostrer that he had nothing to do with it, or words tothat effect. I have the transcript here, and it appears to me from my reading that Mr. Hellerman never assented to the June 1st date; he never assented to the conversation having taken place on top of the stairway of the court; and he kept on insisting that the only incident he remembered was outside the courtroom.

So it would appear to me from a reading of this testimony that it was your assertion in reply to a question by Mr. Mc Guire that it was June 1st, and also setting forth the location. But that was not Mr. Hellerman's testimony. I have the transcript available here, if you should like to peruse it.

MR. EDELBAUM: I have a very good memory. I am not challenging your Honor's statement.

THE COURT: Am I incorrect in my brief summary?

MR. EDELBAUM: No.

THE COURT: So it would appear to me that question directed to Mr. Hellerman concerning the conversation with Mr. Ostrer in the setting that he has described are entirely proper.

MR. EDELBAUM: What has that got to do, most respec fully, with the added statement by the witness about him going back to Mr. Dio?

THE COURT: I am coming to that.

You know, you do that all the time. You never allow me to finish.

I said as to that, it is entirely proper to inquire of Mr. Ostrer concerning his conversations.

MR. EDELBAUM: I never challenged that.

THE COURT: I am going on.

MR. EDELBAUM: I never challenged that, your Honor.

THE COURT: Would you let me finish, please?

MR. EDELBAUM: Certainly.

THE COURT: Now, as to the other problem raised, that after this conversation concerning the testimony by Mr. Hellerman that Ostrer asked him for a letter and that thereafter he saw Ostrer proceed to go and speak to Dio, or Johnny, that he saw Dio nod his head, as to that I have very little doubt that that can be properly received.

The next question that that we have to weigh is whether the prejudice outweighs the probative value, and I think that is a reasonable standard here.

Again, in the interest of caution, I think that that question and answer, although it is incorporated in one question and answer as a whole question, should be removed. I think the question should be withdrawn and reframed.

MR. GOLDBERG: May I be heard?

THE COURT: This is a ruling which is adverse in part to Mr. Mc Guire, and I think I would like to hear from him first.

MR. MC GUIRE: Your Honor, I must very respectfully suggest that if the evidence is relevant and if, as I believe to be the case, there is not any Bruton problem involved in it --

THE COURT: I agree with that --

MR. MC GUIRE: -- then whether as direct examination or as redirect examination, the evocation of joint admissions by the defendants, which I conceive this situation to represent, does not pose a question of prejudice at all.

I certainly agree with your Honor that the testimony is damaging, as all relevant, probative testimony is damaging, but I have a little trouble discerning where one can perceive in this sequence of events prejudice to the defendants.

Now, I must say in all candor that it is not a problem at this stage I have thought through completely, because the notion of prejudical arising out of this sequence of events is a new thought to me. We don't have a problem of the kind usually associated with the test that your Honor has described, the weighing of prejudicial effect as against probative value. I suspect that your Honor's thoughts on this matter are based on the general ground that the Court has supervisory discretion over the admission of circumstantial evidence, but, once again, it seems to me that if circumstantial evidence, this evidence comes as close to being direct evidence as any I have seen.

THE COURT: But it is circumstantial evidence for the jury to be permitted to draw inferences of admissions of conscious guilt. It is direct evidence jn the sense that he is describing his own observations.

MR. EDELBAUM: Might I answer?

Since it is circumstantial evidence, since your Honor has its supervisory power to see that the defendants are tried in an atmosphere free of prejudice, and since the rule in this circuit is different from the rule in the state, that the hypothesis which the jury may infer from the circumstantial evidence is not only one that excludes everything but innocence, I think because of that rule, because of that prejudice, your Honor should weigh very carefully, as you are doing, the admissibility of such type of evidence.

THE COURT: When you speak of such type of evidence, are you pinpointing the particular area of denials?

MR. EDELBAUM: Yes.

THE COURT: I have expressed my thoughts about

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that, and unless Mr. Mc Guire can persuade me, I will not change my position as to that.

MR. MC GUIRE: Your Honor, as I have indicated, we have not researched the law in this context.

THE COURT: I have not, either, to be very frank, because I have had no more time than you have.

MR. MC GUIRE: With respect to this particular point of testimony, I would suggest that before taking any action of that kind we be permitted to research and brief the matter with the Court.

THE COURT: Very well.

Then what would you do in the meantime?

MR. MC GUIRE: It seems to me, sir, that in the meantime the trial simply ought to proceed. The evidence, I take it, will not be forgotten by the jury, and if your Honor is to strike it and issue a cautionary instruction, I would think that that cautionary instruction would have equal impact whatever the point at which it was delivered.

THE COURT: Are you also suggesting that this jury be excused for the time being and another witness be put on and that he subsequently be recalled?

MR. MC GUIRE: I think we can proceed with the last few questions of redirect examination that I have, and I will allow counsel to proceed with any recross examination that they may have, all hands having an opportunity to look at the law on the subject, and at a convenient time if your Honor should decide to strike the testimony, your Honor can advert to it, and I think everybody on the jury will know what your Honor means.

THE COURT: Let's assume that I agree to this suggestion, I still see no reason why we can't excuse the witness for the time being and put another witness on.

MR. MC GUIRE: You mean excuse this witness for the time being?

THE COURT: Yes, Hellerman.

MR. MC GUIRE: The only problem I see with that is a practical one. This man has been kept under very close security guard, and if there is anything affirmative to be gained by keeping him here for that purpose, then I would certainly accede to your Honor's suggestion. I suppose in the final analysis it would depend upon whether or not counsel in the event the testimony stays in wish to conduct cross examination or recross examination on the basis of it. If counsel indicate that they do not wish to do so, then I would see no problem at all.

However, if counsel do wish to examine on the subject, then I think your Honor's thought is the only practical one.

MR. EDELBAUM: There is only one difficulty with that: There is a question as to whether we are going to cross examine.

The prejudice, as I view it is now. I do not personally believe that any curative instructions can be given.

But assuming that your Honor disagrees with me and gives the curative instructions, they should be done promptly. And then if the government is permitted to call him later on in this matter and to leave this lay right here, it would be more significant than it ever was, more prejudicial, and either one of two things is going to happen.

I feel your Honor should decide this case now. Either the case should be adjourned and continued until the government, if it is able to, is able to convince your Honor to change your mind and rule the way the government suggests should be ruled, or you should decide this matter now, strike it out and let that be the end of it.

THE COURT: I will not do that. Certainly I won't foreclose the government the opportunity to research the question.

MR. EDELBAUM: I am not going to waive my cross examination.

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THE COURT: I don't ask you to.

MR. EDELBAUM: I am responding to Mr. Mc Guire.

THE COURT: That is why I thought if we excuse the witness and kept him about so that he can be recalled, rather than fragment this redirect and fragment the cross examination.

I think that that would be very awkward.

MR. EDELBAUM: I would not consent to that.

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MR.GOLDBERG: May I be heard?

THE COURT: You don't consent to what?

MR. EDELBAUM: To the witness being excused and then calling another witness in the meantime.

THE COURT: Then we can allow McGuire to proceed with any other questions and bypass this area until he has had an opportunity to research it.

MR. EDELBAUM: I would object to that. Thatwould mean recalling the witness as far as Monday.

THE COURT: No, I don't think we will do that. If we come to that point afterhe has concluded his cross-examination as to those portions that he still has remaining, bypassing the question that has just been raised, you can undertake recross-examination as to the testimony that's already been adduced.

MR. EDELBAUM: What am I to do about this point, about my cross-examination on the point which is stil left open?

THE COURT: The way we would deal with that at this moment, the question would be withdrawn.

MR. EDELBAUM: And the jury instructed to disregard this and then have to come back later on and say the question is good now? The prejudice is greater then.

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THE COURT: You must keep in mind, at the moment even if I were to leave the nod in, I don't think that is error at all.

MR. GOLDBERG: May I be heard on that?

THE COURT: Yes.

MR. GOLDBERG: I cited the Fantuzzi case, 463 F. 2d 683. The case is not in point and I pointed that out in my argument, I thought. It seems to me the nod can be taken as an admission or a consent by Dioguardi, the government would have it offered for that purpose, as a consent by Dioguardi that Hellerman go along and misrepresent the facts in a letter or an affidavit the subject of which was --

THE COURT: Aren't we clear the case is not in point?

MR. GOLDBERG: If I may be allowed to finish I will show its relevancy. It is not in point. It is nevertheless helpful, I submit. We are offering this statement in an effort to show that Dioguardi has assented to the conduct of Ostrer in seeking to have Hellerman submit an affidavit at variance with the true fact.

To that extent, there is a factual gap which would make this proof appropriate for reception

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into evidence. There is absolutely no evidence as to the nature of the conversation or the subject of the conversation between the defendants Dioguardi and Ostrer, nor has the government offered proof through Hellerman at this point -- it may later -- to this point that Ostrer said to Hellerman, "Let me go and check this out with John."

MR. MC GUIRE: As with all circumstantial evidence, your Honor --

MR. GOLDBERG: I am not finished, Mr. McGuire. May I be permitted to proceed.

It seems to me in the Fantuzzi case the Court was concerned about the reaction of the person who stood in the same position as Dioguardi for the evidence was clear as to the conversation of the person who stands in the same position as Ostrer because testimony was received as to what the person like Ostrer said to the person like Dio.

What is not clear in Fantuzzi is what Dio's reaction was, if I alter the facts to fit the case of Fantuzzi.

In this case it is the reverse of the Fantuzzi situation. It is not on point or in point, but the problem still exists to the extent that we in thiscase don't have the subject matter of the discussion between Ostrer and Dio at all in evidence and we don't have any statement by Hellerman as to what he was going to discuss with the defendant Dioguardi when he went over to him. The nod doesn't have any probative value, it seems to me. It allows the jury to speculate. That is number one.

When your Honor pointed out, my second point, when your Honor pointed out that this is not something that deals with explaining some false statement that Hellerman has admitted making in his cross-examination in answer to one of Mr. Edelbaum's questions, it becomes clear, does it not, that Mr. McGuire is not offering this for rehabilitation because it is not to explain an inconsistency? Hellerman has denied ever having made this statement in the courthouse.

So that -- am I wrong in that?

THE COURT: I am not going to engage in any further dialogue. You put your statement on the record and we will leave it atthat.

MR. GOLDBERG: I thought your Honor pointed out the record reflected Hellerman did not admit making any false statement in the courthouse in response to Mr. -- withdrawn.

gwr5

Mr. Edelbaum's direct examination elicited that an exculpatory statement of Ostrer was made at a time and place I believe other than the one that Mr. McGuire is inquiring about which took place outside the courthouse -- which took place outside the courtroom. I thought that's what your Honor said, and to that extent this conversation that Mr. McGuire is inquiring into would not be one that would rehabilitate the witness but would be offered as a proper subject, perhaps, for direct examination and not to rehabilitate or explain some falsehood of the witness because I believe the witness never acknowledged having made the false statement in the first place.

THE COURT: Do you wish to respond?

MR. MC GUIRE: It is perfectly clear to me from the record that the witness acknowledged having made a false statement and the only question that the record leaves open and as to which the witness and Mr. Edelbaum seem to disagree is where.

THE COURT: Now as to procedure, do you think it is desirable to adjourn so that you can check this point that I do not consider very significant and crucial?

MR. MC GUIRE: Your Honor, I would rather not adjourn. I think we have kept counsel and the jury

gwr6

waiting long enough. I'd prefer practically any alternative other than adjournment for the purpose.

THE COURT: What are the alternatives? The alternatives are very few. They are either to call another witness out of turn, fragment cross-examination on what you have already adduced, excepting this one question and what you may adduce further, and than recalling the witness after a ruling has been made should it be favorable to you. Those are the alternatives.

MR. MC GUIRE: Yes, sir. Either one of those alternatives would be all right with us.

THE COURT: But thay are not consented to.

MR. MC GUIRE: I understand they are not consented to, your Honor. I think, however, the Court does have --

THE COURT: But they are very awkward alternatives and I am not pleased with them. They are confusing. It breaks continuity. It makesit difficult to proceed in that fashion.

MR. MC GUIRE: I appreciate that, your Honor. I appreciate that and I think, really, I had the same concern in mind when I suggested that an adjournment at this stage would do the same thing.

THE COURT: I am not pleased with that either, but I find that the lesser of all the evils that I have suggested. I don't want to foreclose you from an opportunity to make your point and to research it.

MR. MC GUIRE: Perhaps we can do this, your Honor: Perhaps if you will grant Mr. Schaffer and me a half hour or 45 minutes to get to the library we can resolve the question fairly well then and make whatever arguments we have to your Honor on the basis of the alternatives. I would hate under the circumstances to adjourn for the day.

THE COURT: I would, too, and I am not sure I will accede to it, but I certainly will to a half hour and we'll take a close hard look at it and perhaps counsel would like an equal opportunity to do the same.

MR. MC GUIRE: Fair enough. Thank you, your Honor.

THE COURT: 2:30.

(Recess)

(In the robing room.)

MR. MC GUIRE: May I begin, your Honor?

THE COURT: You may.

MR. MC GUIRE: My research led me to believe, as is so often the case, we may have missed the obvious in connection with this matter.

A very quick consultation that was called resulted in a very quick answer by one of my colleagues, for which I am grateful, that in addition to being relevant as an act showing consciousness of guilt, a verbal act showing consciousness of guilt, the Dioguardi nod and the course of conduct which led up to it can also be considered relevant as acts which occurred after the conspiracy, but which are relevant to show its existence, and, more particularly, the membership of both Dioguardi and Ostrer therein.

My colleagues pointed me directly to the well known case, which I am sure your Honor is familiar with, of United States against Bennett, 409 Fed. 2d. 888, a 1969 case of the Court of Appeals, and I invite the Court's attention to page 893.

I have brought the case along with me.

I have reference, your Honor, to the general proposition of law stated in this case, that acts relevant to the performance of a conspiracy are admissible even if if they occur after the conspiracy ended.

Here the government would argue the act of Ostrer going overto Dioguardi under the circumstances which the witness has related and the act of Dioguardi nodding are relevant to show the manner in which the conspiracy operated, even though, concededly, the conspiracy had ended some time before, even if only at the filing of the indictment.

MR. EDELBAUM: Your Honor, with all due respect to Mr. Mc Guire, I don't think it has any relevance whatsoever, and he has turned it around now.

You know, I reviewed, your Honor, what actually happened during the recess in my examination, and I would like to put it on the record so we would have it very clear what we are talking about. Let us see what actually was said.

"Q Now tell me, do you remember June 1, 1971?

"A Not offhand.

"Q Let me refresh your recollection, if I may.

"Do you remember the day youwere arraigned on the indictment in Belmont, that you had to come into court and plead not guilty?

"A Yes.

"Q Was Mr. Ostrer there? Do you remember him being there?

"A I don't remember. I remember at one time seeing you here, I remember seeing Mr. Ostrer here, I remember seeing Johnny here. I don't know if that is the same day you are talking about. I went down the elevator with you that day.

"Q Do you remember a lawyer named Mr. Wynn, who was with Mr. Ostrer on June 1, 1971?

"A I am sorry, I don't remember. The only incident I remember is the time when Mr. Edelbaum was here when he spoke to my attorney and Mr. Ostrer was here and Johnny was here. At that time I remember being in the courtroom. I don't know if that is the day you are talking about.

"Q Do you know a Mr. Herry Bobish?

"A No, sir.

"Q Do you remember on the day that you came up the steps to answer to this indictment you saw Mr. Ostrer with some people?

"A I remember the day that I described to you, sir. That is the only day that I remember.

"Q .Did you ever say to anyone, referring to Mr. Ostrer, 'He's in this innocently and he is being prosecuted for nothing. It's all my fault.'

"Do you remember saying that?

"A Something similar to that, yes.

"Q Was that true?

"A No, sir.

"Q You volunteered it and it wasn't true?

"A Correct."

Now, what that has to do with an offer by the government to explain that, that Mr. Ostrer came over and asked for a letter when he admitted that he volunteered, I can't understand, and I couldn't understand this case, the Bennett case, that was cited as an authority, as being any authority, when he wants to show now on redirect a consciousness of guilt by Mr. Ostrer.

This is not in response to the explanation of something that the witness has volunteered according to his own testimony under oath.

Now, the going over and talking to Mr. Dio and the nodding of the head, without us knowing at all what was said by Mr. Ostrer at the time, to have that come in under the theory of consciousness of guilt post conspiracy on redirect examination, I fail to see whether is any authority for it, and I press my objection.

MR. GOLDBERG: May I be heard?

THE COURT: Yes.

MR. GOLDBERG: I think consciousness of guilt is a very damaging piece of proof to offer against a defendant, and I think the act of the defendant Dioguardi nodding without more is --

THE COURT: Haven't you gone over this again and again and again? Do you have another point to make?

MR. GOLDBERG: If your Honor is disturbed by my legal arguments, I will desist.

THE COURT: I am not disturbed; it is that you are redundant.

MR. GOLDBERG: I am not redundant; I am protecting my client's interests. If your Honor thinks I am laboring the record, I will desist.

THE COURT: You will hear no more interruptions from me. Go on to your heart's content.

MR. GOLDBERG: Consciousness of guilt is a very serious and damaging piece of proof to admit against a defendant. It should be done so and the admission of such evidence should be as a result of conduct which gives the Court a feeling of confidence that it is done with a knowledge of the defendant's actions in taking a course of action which acknowledges his participation in the case or his consciousness of guilt. The act of nodding one's head without there being any proof is, I say, too equivocal to permit its reception in evidence and would lend speculation on the part of the jury as to the import or meaning of the [illegible]

I would [illegible] your Honor to weigh that in exercising your discretion to deny admission of this piece of evidence.

THE COURT: You see, Mr. Mc Guire, I can't agree with you that I have lost sight of the obvious.

MR. MC GUIRE: I didn't say you had; I said I had.

THE COURT: I am not sure you lost sight of the obvious. I don't know that the obvious is relevant here. I don't think we have a problem on the question of relevance here, of post termination conspiracy acts as bearing on the conspiracy by way of admissions, or any other sign of consciousness that the conspiracy if entered into endured. That is not my problem. My problem reduced to its simplest terms, allowing for the moment that it is entirely proper for you on redirect to rehabilitate the witness concerning his statements to Ostrer, in substance, that he was not guilty, we have a question of the transcript, the questions and answers, but assuming that that is proper, we then come to the remainder of the language that Ostrer went on to Dioguardi, and let us assume at this point that that is relevant, but is it proper redirect to bring this new matter out on redirect? Wasn't this more appropriate, assuming relevancy, to have brought it out on direct?

Now, you have said in argument at the side bar by way of a reason why you didn't bring it out on direct is that you didn't think it could be brought out on direct.

MR. MC GUIRE: Well, I had some doubts about it, your Honor.

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THE COURT: I am not prepared to rule, but my feeling is that most assuredly it could have been brought ou on direct.

I will go one step further, ignoring the sage advice never to go beyond that which is necessary, I am not at all certain that it could not have been brought out that Ostrer had asked Hellerman for a letter indicating that he was in no wise inculpated in the crimes.

MR. MC GUIRE: Yes.

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MR. MC GUIRE: Yes, I think on reflection your Honor is undoubtedly correct. That could have been brought out on direct examination.

THE COURT: So my real problem is really quite simple on the Dioguardi nod, quite simple: Whether this is proper redirect, and it is my opinion that it is not. And then as a further and added statement, although this does not give me too much comfort because I can see some possible infirmities, using the guideline of whether the probative value operates to prejudice, and here again I am not unaware of the line of cases dealing with California, McAdams and the gory kind of thing prejudice, if you know what I mean?

MR. MC GUIRE: Yes.

THE COURT: I am not so sure that fits into the parameters of that line of cases, but my real concern is whether or not this is proper redirect, and for all that I can say at this moment after having turned this over from the moment the question was presented to me, I cannot see that it's proper redirect.

Now, I am also not unaware of the broad general discretion of the Court to do one of two things where a proper and demonstrable good cause showing has been made: To reopen direct or to deem on cross-

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examination if that it is part of direct, of course always permitting the defendant's counsel to examine into whatever new matter is raised. But no such showing has been made nor -- and this is an assumption -- would I think that any such showing can be made, that it is inference, discretion, usual kind of litany expressions that are involved in a demonstration of showing in that area.

MR. MC GUIRE: I think your Honor knows that the government has during its direct examination been pretty cautious to stay away from any possible prejudicial areas of examination. Indeed, in the strongest terms I knew how I have conveyed that thought to all of the government's witnesses.

THE COURT: I have no hesitation, Mr. McGuire, in stating for the record that you have been scrupulously fair and that you have exercised the greatest amount of discretion thatyou could under the circumstances that are always difficult when you are dealing with questions and answers. But I am still concerned with the problem and I think that the wise decision, weighing all of the factors that we have before us, is to exclude the nod. The decision that you pointed to merely talks about it in terms of relevancy, and I said earlier, I have no doubt as to

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its relevancy whatsoever. It is not a question which bothers me one whit.

MR. EDELBAUM: May I ask a question, your Honor?

THE COURT: Surely.

MR. EDELBAUM: Is Mr. McGuire going to be permitted on this bit of evidence which has been presented -- I am not talking about the nod, I am talking about the question of Mr. Ostrer to Mr. Hellerman, "Would you give me a letter," as consciousness of guilt, is he going to be permitted to argue to the jury that that was consciousness of guilt?

THE COURT: No, I will not allow it in for that purpose. I will allow it in for the very narrow and limited purpose as stated in Cirillo, and that is for the purpose of giving Mr. Hellerman an opportunity to explain his prior inconsistencies, and that's it.

MR. EDELBAUM: Very well, your Honor.

THE COURT: To allow it in for any other matter presents the same problem as the problem of Dioguardi's nod. It is new matter.

MR. EDELBAUM: I wanted to alert Mr. McGuire.

THE COURT: It is new matter, I think, and is improper on redirect.

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MR. GOLDBERG: May we discuss how it can be cured now that many hours have gone by after it was introduced?

THE COURT: Yes, indeed.

MR. EDELBAUM: Very frankly, your Honor, I must legally take the position that it cannot be cured.

THE COURT: That is all right.

MR. EDELBAUM: I still persist in my motion for a mistrial.

THE COURT: Your motion is denied.

MR. EDELBAUM: Exception.

THE COURT: If you wish to offer any exceptions and talk about cautionary instructions I will hea you.

MR. GOLDBERG: May I join in that motion?

THE COURT: Of course. You did join in that motion.

MR. GOLDBERG: I am joining in to the extent he has just made it.

THE COURT: The motion is denied.

MR. EDELBAUM: And I would suggest that as you have done before that you strike the question -- the noo and that you te-1 the jury as to other matter it is only offered for the limited purpose of having Mr. Hellerman explain the statement and that it is for them to determine which is accurate or which is not.

I am not giving you the language, but I am giving the inference.

THE COURT: Do you have a suggestion, Mr. Goldberg?

MR. GOLDBERG: What troubles me is the way your Honor has handled this in the past when you asked the jury to disregard these things, a number of hours have gone by. I haven't decided yet whether I might take a chance and suggest to your Honor that you pinpoint what it is that you are asking them to disregard.

THE COURT: I intended to do precisely that whether you adk me or you don't.

MR. GOLDBERG: I didn't know that so I just touched on it rather than ask.

THE COURT: You indicated that you had some reservations whethrr you thought you would ask me to indicate the portions that I would ask the jury to disregard or not.

MR. GOLDBERG: Yes. I would ask you --

THE COURT: So I am saving you from making that decision.

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MR. GOLDBERG: Thank you very much, your Honor.

MR. EDELBAUM: That will be the only way the jury could understand the striking of evidence such a long time.

(Discussion off the record)

THE COURT: Here is how I propose to give the jury the precautionary instruction.

Before we recessed the following question was put to Mr. Hellerman: "Did you discuss the terms of the letter that Mr. Ostrer asked for?"

Mr. Hellerman answered: "Mr. Ostrer wanted a letter exonerating him from any blame in the deal and I said I would give him such a letter. After I said that Louie left from where he was, went across the hall and went to speak to Johnny and then Johnny nodded his head and -- looked at me and nodded his head."

At this point I will tell the jury that only the answer given by Mr. Hellerman, and then I will read that portion of the answer which is acceptable, is admitted and that only and exclusively and solely against Mr. Ostrer and not Mr. Dioguardi and only solely and exclusively for the purpose of explaining away any inconsistencies brought out on cross-examination.

MR. GOLDBERG: That is not satisfactory to the defendant Dioguardi. I would ask your Honor to instruct the jury that that portion -- affirmatively, that portion of the answer in which he testified that he observed the defendant Dioguardi nodded is stricken and you will recall my instructions that when I strike something to get it out of your mind.

I would like you most respectfully, if I may and suggest that an affirmative --

THE COURT: I will do that.

MR. EDELBAUM: Thank you, Judge.

THE COURT: Are there any other problems you can alert us to?

MR. MC GUIRE: Your Honor, I assume that since the question of fabrication of the story has been raised on cross-examination there will no no difficulty with a short series of questions dealing with the subject of whether Hellerman, in preparing for his testimony, has had an opportunity to talk to or that he has consulted records or other individuals connected with this after. I expect that his answer will be that he has not.

MR. GOLDBERG: I think, your Honor, I don't know of any questions that went into that on cross-examination, whether he discussed with other people the line of inquiry or the line of examination or the type of answers he ought to give on direct examination. I don't recall my cross-examination touched on that at all.

THE COURT: Do you wish to be heard, Mr. Edelbaum?

MR. EDELBAUM: I think he is talking about when a witness is challenged by recent fabrication. Does Mr. McGuire contend every time a lawyer examines a witness that that is a contention that he is fabricating anything? His general credibility is at issue and I have never asked one question did he refresh his recollection, did he talk to Mr. McGuire. No such inferences were raised so I can't see any reason for such a question.

MR. MC GUIRE: I will explain my reason, your Honor.

Not only was the witness' general credibility attacked by virtue of his constant examination onthe quest n of his past crimes, the defense went further in cross-examining him and asked him questions designed to show his expectaion in reapect of prosecution at the hands of the government.

Thus it seems to me perfectly clearly

inferentially to suggest that he had a motive to fabricate a story and that in fact that is what he has done. It seems that since that matter has been raised extensively on cross examination the government is entitled to pursue the matter of fabrication of the story.

THE COURT: I will allow it.

MR. GOLDBERG: Your Honor, can I say something?

The issue of recent fabrication would be relevant were his past statements inculpating Dioguardi made at a time when the motive was different from the motive he has now. He from the time he walked into the United States Attorney's office had a commitment that he wouldn't be prosecuted. So his motive in culpating Dioguardi at that time is the same motive as he has now to inculpate the defendant Dioguardi.

Recent fabrication would be a proper subject if Mr. McGuire could show he inculpated Mr. Dioguardi prior to the time he had the expectation of favorable treatment from the govrenment, but he always had that, I think, he acknowledge from the time he first walked in and spoke to the government.

MR. MC GUIRE: The doctrine of recent fabrication has absolutely no application here. I am not trying to show prior consistent statements, which that body of case law is all about.

MR. EDELBAUM: Frankly, I don't understand what Mr. McGuire is trying to do.

THE COURT: Do you understand what Mr. Goldberg is trying to do?

MR. EDELBAUM: I don't want to criticize anybody. You are the judge, you made a ruling. All I can do is abide by it.

THE COURT: And your objection is noted.

MR. EDELBAUM: Yes.

MR. GOLDBERG: As is mine, your Honor.

MR. EDELBAUM: I might say, your Honor, I am really pushing tofinish the day because I let myself, unfortunately, go this morning and it's had its effects. I didn't want to do what the doctor thought I should do.

THE COURT: Do you wish me to suspend after Mr. McGuire is finished with his redirect examination?

MR. EDELBAUM: Yes. After we finish with the witness.

MR. GOLDBERG: I won't have any recross.

MR. EDELBAUM: I will be very short.

We have forgotten something. We have not fixed the timetable for tomorrow for the taking of the deposition.

THE COURT: The timetable tomorrow is open. I was going to discuss it with you at the conclusion of the day. Any time that you desire to have Mr. Kelsey here is convenient to me. Have you arranged to have a doctor present to stand by his side?

MR. MC GUIRE: I have one problem which I hope we can work around, your Honor. My presence will be required briefly in the Court of Appeals tomorrow around 10:30.

THE COURT: Set your own time.

MR. MC GUIRE: So I would think that whenever is convenient for everybody else would be okay with me but I would like to suspend at 10:30 for a few minutes so I can take care of that engagement. Subject to that any other time is satisfactory.

THE COURT: That might be good for the witness, too.

MR. SCHAFFER: When I spoke to Dr. Jaffe the other day on the phone, he expressed a strong preference for 9:30. At that time, subject to subsequently changing the time, I asked him if he would be in the courtroom at 1506 at 9:30 and he said he would.

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MR. GOLDBERG: Before you give the instruction to the jury at the end about returning at 9:30 Monday morning, I wanted to alert you to the fact Judge Pollack has put on the calendar a sentence or possible disposition at 9:45 on Monday.

THE COURT: Can somebody handle that for you?

MR. GOLDBERG: No. I am all alone. It involves some payments of money to a marshal. It is a rather sensitive case.

THE COURT: How long is that going to take?

MR. GOLDBERG: 15, 20 minutes.

THE COURT: Call the jury in for ten?

MR. GOLDBERG: Could I impose upon you for that?

THE COURT: All right.

MR. GOLDBERG: Thank you very much.

MR. SCHAFFER: Shall I leave with the instruction with the doctor stand as previously indicated?

THE COURT: Yes.

(In open court; jury present)

THE COURT: Again I ask for your indulgence. I wish I had available to me a thousand ways of saying I'm sorry for the delays, but perhaps nothing can express it better than to tell you I am deeply sorry that these delays have been necessary.

Before we suspended for lunch Mr. Hellerman was asked the following question by Mr. McGuire:

"Did you discuss the terms of the letter that Mr. Ostrer asked for?

"A Mr. Ostrer wanted a letter exonerating him from any blame in the deal and I said I would give him such a letter."

This statement applied solely and exclusively to Mr. Ostrer and in no way applied to Mr. Dioguardi. And this statement is solely and exclusively received for the limited purpose of explaining away any inconsistencies brought out on cross-examination.

Now as to the remainder of the statement:

"After I said that, Louie left from where he was, went across the hall and went to speak to Johnny and then Johnny nodded his headand-- looked at me and nodded his head."

That statement is not in evidence, is completely stricken, and does not apply in any way to the defendants and has no probative value and you may not consider it under any circumstances. It is stricken from the record and, accordingly, in further emphasis of the instructions that I have given you as to matters that have been stricken, you are to ignore it completely, you are to strike it from your mind and, to put it colloquially, it just was never said for purposes of you, the jury.

Is that understood?

MR. MC GUIRE: If the Court please, would your Honor be good enough to instruct the witness to answer my questions responsively and to go no further than the question?

THE COURT: Mr. Hellerman, you understand what is meant by an instruction that you answer questions responsively?

THE WITNESS: Just answer the question.

THE COURT: Just answer the questions and don't go beyond them, and to use the simplest of all illustrations, if you are asked whether this is Wednesday or Thursday or Friday, you would answer that it is Thursday. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: If you are asked if this is Thursday, don't say it is Friday or Monday or Tuesday, possibly, or otherwise. In other words, confine your answer to the precise limits of the question. Is that clear?

THE WINTESS: Yes, sir.

THE COURT: And don't go beyond it.

MR. MC GUIRE: May I proceed,your Honor?

THE COURT: And again if you have any hesitation, any thought or any concern about any answer, please indicate that to Mr. McGuire and the Court will be prepared to hear you and counsel at the side bar.

THE WITNESS: Okay.

BY MR. MC GUIRE:

Q Mr. Hellerman, you have told us that you agreed with Mr. Ostrer to furnish him with a letter which would declare his innocence, am I correct?

A Yes, sir.

Q At or about that same time, did you make any other statements -- do you rmember making any other statements to anyone else on the same general subject?

A I am just trying to follow the Judge's instructions. Just the people that were around Mr. Ostrer.

Q You do recall saying something on the subject to the people around Mr. Ostrer?

A Right.

Q Now, Mr. Hellerman, can you tell this jury why you said that?

A I wanted -- I didn't want anyone to know

I was a government informant. I was trying to protect my cover as a government informant, and so by agreeing to give Mr. Ostrer the letter he wouldn't find out I was a government informant.

Q Now, sir, at that time how long had you been acting as a government informant in one way or another?

A Approximately a year and a half, a year. About a year and a half.

Q Listen to the question carefully. Was that with respect to one matter, Mr. Hellerman, or more than one?

A More than one.

Q On approximately how many occasions, if you can recall, did you consult with people from the government during that year and a half?

MR. EDELBAUM: I object to it.

THE COURT: I will allow it.

A Many, many times, Mr. McGuire. I can't give you the exact amount, but many times.

Q . Mr. Hellerman, in preparing for your testimony in this case, did you have any conversation of any kind with any person who was involved in the Belmont situation?

A No, sir.

Q In preparing for your testimony in this case, did you have access to any documents in connection with your testimony?

A No, sir.

Q I have shown you during the course of your direct examination certain exhibits, certain checks primarily. Had you seen those during the course of your preparation for him in this case?

A No, sir.

MR. MC GUIRE: No further questions.

MR. GOLDBERG: Just a couple.

RECROSS-EXAMINATION

BY MR. GOLDBERG:

Q You say you consulted with the government on many occasions after you became a government informant, is that right?

A Correct, sir.

Q And while you were a government informant, did you tell the govenment that you were engaged in other criminal activity unknown to the government?

A No, sir.

Q While you came into this building as a government informer, am I correct that you were engaged in criminal activity?

A Yes, sir.

Q Making money in connection therewith?

A I can't answer that question with a yes or no, Mr. Goldberg. I think I gave you a wrong answer not thinking, sir. While I was engaged as a government informer up until -- for the first year or so I engaged in no criminal activity. I only got -- I got back involved in criminal activity --

Q Thereafter?

A Thereafter, not with the first year.

Q In other words, you went straight for a year?

A Approximately, sir.

Q But you went back into criminal activity for a period of six months, is that right?

A Approximately, yes, sir.

Q In a number of stock swindles?

A Yes, sir.

Q In a number of other instances of criminal behavior aside from stock swindles?

A Correct, sir.

MR. GOLDBERG: I have no further questions.

RECROSS EXAMINATION

BY MR. EDELBAUM:

Q Mr. Ostrer, how long had you been a government informer --

MR. MC GUIRE: Excuse me. I think the witness' name is Hellerman.

MR. EDELBAUM: What?

THE COURT: The witness' name is Mr. Hellerman.

MR. EDELBAUM: I am sorry.

Q Mr. Hellerman, how long had you been a government informer prior to the time you were arraigned on the Belmont indictment?

A Since --

Q How long? Listen to the question. In time, months, years, that's what I want an answer to.

A Will you please tell me the date of the Belmont arraignment and then I can give you the time, sir.

Q June 1, 1971.

A Approximately eight months, sir.

Q Now, your lawyer's name --

A Excuse me. You said June 1, '71?

Q Right.

A Add another year to that.

Q Two years?

A Yes. From November --

Q When you first became a government informer?

THE COURT: I don't think he has answered.

MR. MC GUIRE: The witness has not completed his answer.

MR. EDELBAUM: I am sorry.

A The Imperial indictment --

THE COURT: Do your calculating in your head.

A Around six or eight months. My first answer was correct, sir.

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Q Six or eight months? At the time you became a government informant did you have an attorney?

A No, sir.

Q How long after you became a government informer did you retain an attorney?

A Two weeks approximately.

Q What was his name?

A Morris Winter.

Q After that did you retain another attorney?

A Yes, I did.

Q How long after that?

A Four months after that.

Q What was the name of that attorney?

A The firm of Phillips, Nizer, Benjamin, Krim & Ballon.

Q Was Mr. Vincent Broderick a member of that firm?

A Yes, sir.

Q Is he a former police commissioner of the City of New York?

A Yes, he is.

Q After you retained the firm of Phillips, Nizer, including Mr. Broderick, was it then that you made a deal, as you characterize it, with the government that if you would cooperate and if you would agree not to commit any more crimes --

MR. MC GUIRE: I object to the form of the question. I believe it's a speech.

THE COURT: Sustained.

Q Was it after you retained Mr. Broderick that a deal was made with the government about your not being prosecuted under certain conditions? Yes or no?

A I can't answer that yes or no. I would be glad to explain it.

Q Just listen to me, and if you can't answer it yes or no tell me.

Mr. Mc Guire referred to some agreement that was made in October of 1972 between you and the government? Is that right?

A Yes, sir.

Q That agreement was in writing?

A Yes, sir.

Q Was there an oral agreement made at or about or shortly after Mr. Broderick was retained in connection with what would happen to you if you cooperated with the government? Was there an oral agreement?

MR. MC GUIRE: I object to the question, unless it calls for the witness' own knowledge.

MR. EDELBAUM: Your Honor, I object to --

THE COURT: Sustained.

MR. EDELBAUM: May I have a side bar?

THE COURT: You may.

(At the side bar.)

MR. EDELBAUM: He is what I'm trying to establish on recross. Mr. Mc Guire brought out on redirect that the agreement was made in writing and that part of the agreement was that he could still be prosecuted if he committed any further crimes, even after this sentence. There was testimony to the effect on direct that an oral agreement had been made before the written agreement, and I want to show that under the oral agreement -- and you remember Mr. Morvillo coming in and testifying -- it's on the record -- there was an oral agreement which Mr. Hellerman broke. I want to bring that to the attention of the jury, and that despite the fact that he broke the oral agreement he still wasn't prosecuted for the particular crimes.

MR. GOLDBERG: That was brought out on my cross, and I think Mr. Mc Guire has handled the agreement rather fairly, I must concede, and I think further inquiry along the lines of what the oral agreement was might prompt this witness to say that part of the terms included cover or safety. I think that is a proper subject for summation; it is in the record that he broke his promise to Morvillo, and that is enough to argue on in summation, without running the risk of this whole business of this very dangerous agreement.

MR. EDELBAUM: I think Mr. Goldberg doesn't have confidence in me.

MR. GOLDBERG: That is not true.

MR. EDELBAUM: I was going to direct specific questions; I was just going to get answers to specific questions dealing with just these two points, and your Honor has very properly instructed the witness to answer questions directly -- please, Mr. Goldberg --

MR. GOLDBERG: I am talking to Mr. Panzer.

MR. EDELBAUM: You are interrupting me.

MR. GOLDBERG: In front of the jury I will not tolerate an outburst by you. I am speaking to Mr. Panzer. It's as simple as that.

MR. EDELBAUM: You are speaking loud enough so as to interrupt me.

Your Honor, the questions I am going to ask are direct. When he wanted to offer explanations, I was careful to refuse the explanations, being aware of the dangers. I am not going to go into any other area.

THE COURT: Well, an objection has been raised by Mr. Mc Guire which I have sustained. The nature of his objection is that this question should be asked of

Mr. Hellerman depending and based upon his knowledge.

MR. EDELBAUM: All right. If he says he has no knowledge, that is the end of it.

THE COURT: That is the first objection.

Now, is there anything else?

MR. MC GUIRE: The explanation to that, of course, is that this witness should not be permitted to testify now what he learned after a fact, if anything. I think the question is directed to his state of mind as to what he knew during the course of the 1971 period, and that is proper. I understand Mr. Goldberg has also objected. I think your Honor's limitation to the question has taken care of it.

MR. EDELBAUM: I don't understand what Mr. Mc Guire is saying.

MR. GOLDBERG: Your Honor --

THE COURT: Before you are heard, we ought to give Mr. Edelbaum an opportunity to finish.

MR. EDELBAUM: Mr. Mc Guire should let Mr. Goldberg state his position, and not be concerned that Mr. Goldberg made an objection. I say as a lawyer I am endeavoring to offer proof, and, of course, if he learns something from his lawyer in line with this it is admissible, because it goes to the state of mind and to show that despite the fact that he knew about this oral agreement, that he went ahead and broke it. I think I am entitled to show that.

t5/2 MR. MC GUIRE: I think Mr. Edelbaum is correct in saying that. My objection is to the breadth of the question as possibly calling for hearsay declarations which came to his attention later on.

THE COURT: Would you limit the question so that the witness understands exactly what you are asking?

MR. EDELBAUM: Yes, your Honor.

MR. GOLDBERG: May I be heard?

THE COURT: Yes.

MR. GOLDBERG: I don't want to have it construed, as far as I am concerned, that any door was opened about any and all other terms of the agreement.

THE COURT: Whether you want it construed or not it not particularly relevant. Your objection has been noted and it is overruled.

MR. GOLDBERG: I can't ask for me. Thank you.

(In open court.)

BY MR. EDELBAUM:

Q Mr. Hellerman, will you try to answer the questions responsively as the Judge has suggested to you heretofore?

A I will, sir.

Q Did you make a promise to the government that you

1056

would not engage in any criminal activity long before you entered into any written agreement? Yes or no.

A Yes, sir.

Q Did you break that promise?

A Yes, sir, I did, sir.

Q Were you prosecuted because you broke the promise for the cases that you understood you would not be prosecuted for?

A Yes, sir.

Q Which case?

A At Your Service Leasing and Belmont Franchising.

Q Those were the two counts you pleaded guilty to?

A After I broke the deal, sir.

Q Those were the only two counts?

A I had already pleaded guilty to Imperial.

Q So you pleaded to the three?

A Yes, sir.

Q But not the others?

A No, sir.

Q And you got a two-year sentence?

A Correct, sir.

Q And under what you pleaded to in Imperial the most you could have gotten was two years? Is that right?

A Six years.

Q Six years? But you only got two for all three indictments?

A Yes, sir -- five years probation.

Q You told us about this letter that Mr. Ostrer asked you for?

A Yes, sir.

Q Did you ever give him the letter?

A No, sir.

Q And to this day did you ever give anything in writing to Mr. Ostrer along the lines that you have just testified he asked you for?

A No, sir.

MR. EDELBAUM: No further questions.

MR. MC GUIRE: Nothing further.

MR. GOLDBERG: I have nothing further, your Honor.

THE COURT: May we excuse the witness?

MR. EDELBAUM: Yes, your Honor.

MR. GOLDBERG: Yes, your Honor.

MR. MC GUIRE: Yes, sir, your Honor.

THE COURT: You are excused. Step down.

(Witness excused.)

MR. MC GUIRE: At this time, your Honor, the government would like to have marked Exhibit 202, 203 and

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204 for identification.

MR. EDELBAUM: If those exhibits are going to be offered I may want to ask questions about them from Mr. Hallerman.

THE COURT: Keep the witness here.

xx (Government's Exhibits 202, 203 and 204 were marked for identification.)

MR. EDELBAUM: I am not sure, your Honor.

MR. MC GUIRE: At this time the government offers Exhibits 202, 203 and 204.

MR. EDELBAUM: Your Honor, I have no objection on the ground of authenticity or anything like that; my only objection is as to relevancy.

THE COURT: That objection is overruled.

MR. GOLDBERG: I have no objection, your Honor.

MR. EDELBAUM: Your Honor, I have no questions of Mr. Hellerman after reviewing the documents.

xx (Government's Exhibits 202,203 and 204 were received in evidence.)

MR. MC GUIRE: May I proceed, your Honor?

THE COURT: You may.

(Mr. Mc Guire reads from Government's Exhibits 202 and 203 to the jury.)

MR. MC GUIRE: Exhibit 204 in evidence

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is a similar document in another case; its text is exactly the same as Exhibit 203, with the exception of the fact that the securities mentioned are common stock of At Your Service Leasing Corporation.

Nothing further at this time, your Honor.

MR. GOLDBERG: May I speak to your Honor at the side bar?

(At the side bar.)

MR. GOLDBERG: Your Honor, I would ask for a cautionary instruction with respect to the guilty plea of Michael Hellerman, that the fact that Michael Hellerman pleaded guilty may not be taken as evidence by the jury with respect to any of the defendants on trial. I think the Court of Appeals says we are entitled to such an instruction, and I think the appropriate time is now.

THE COURT: I have no intention of giving any such instruction; I don't think it is warranted; I don't think it is appropriate; I don't think it is necessary.

MR. GOLDBERG: May I then object to your failure to so instruct?

THE COURT: Certainly, object to your heart's content every second on the second.

MR. GOLDBERG: All right, sir, yes.

MR. MC GUIRE: I assume that that subject will be adequately covered in your Honor's charge?

THE COURT: It will, and I would suggest since counsel for the defense have given no requests nor asked for any instructions, that perhaps you submit one.

MR. MC GUIRE: Yes.

MR. EDELBAUM: Your Honor, I know that your Honor has given very careful instructions about newspapers and everything, but I would particularly ask you to do it again today, because I have become aware of an article in the Post today which deals with Mr. Dioguardi and Mr. Di Lorenzo in connection with another matter.

THE COURT: Do youhave it?

MR. EDELBAUM: Yes.

THE COURT: I have not seen it.

MR. EDELBAUM: I would be happy to show it to you, but I don't want to do it in an obvious manner.

THE COURT: Show it to me later.

MR. GOLDBERG: Before the jury leaves?

THE COURT: No, after.

(In open court.)

THE COURT: Ladies and gentlemen, we are going to suspend for the day. As I indicated earlier, because of matters which are to take up our time tomorrow and which do not concern the jury at all, you will not be called upon

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to sit tomorrow or Saturday. This provides you with a long weekend.

I do not think that my admonitions which I issued repeatedly have been forgotten by you, but perhaps an excess of caution and with the possibility of boring you, I would ask you to keep clearly in mind and be reminded of my admonitions: One, that you not discuss this case with anyone, and that means anybody,anybody in the whole world, just to try to illustrate in a most dramatic form not to permit anybody under any circumstances to discuss this case with you or bring some matter in this case to your attention.

t5/3 pm

My instructions further includes that you not listen to any news broadcasts and that you not read any newspaper accounts concerning this case, and I am sure that you understand the basis and the reason for such stringent instructions.

The reason for these precautions is to insulate you to the best of your ability against any possible prejudice either for or against the government, for or against the defendants, because we want you to stand straight and square at all times.

Shoudl any matter come to your attention, I instruct you to bring it to my attention at the earliest possible time.

Is that clear?

It's not an easy task serving as a juror, as I told you at the beginning; it is difficult; it requires a real sacrifice, and that is what you are called upon to do.

Thank you very much.

You have my great appreciation for the patience you have shown, the understanding that you have shown, and I am sure that you know that we have not been taking our leisure. That you can be certain about. So if it gives you any consolation, please be assured that Court and counsel and the personnel of the court have been working steadily from early in the morning and long after you leave. I don't want you to be sorry for us, but I just want you to know that the sacrifices are pretty evenly divided.

Thank you very much.

Mr.Goldberg, I think you said 10 o'clock?

MR. GOLDBERG: I would appreciate that.

THE COURT: 10 o'clock.

THE CLERK: The jury is excused until Monday morning at 10 o'clock.

(Jury excused.)

THE CLERK: Court is adjourned to 9:30 o'clock tomorrow.

(Adjourned to January 12, 1973, at 9:30 a.m.)

AFTERNOON SESSION
2:15 p.m.

(In the robing room)

MR. EDELBAUM: Your Honor, I would like to request through the Court of Mr. McGuire ifthere are any witnesses who testified before the grand jury in this case, Belmont Franchising case, in which the defendant Louis Ostrer was indicted, if there are any witnesses who in any way under oath in their testimony before the grand jury exculpated Mr. Ostrer in this case or in any way gave evidencewhich would be helpful to the defense in establishing the fact that the defendant Louis Ostrer was not involved in the conspiracy charged in this indictment under Brady v. Maryland.

MR. MC GUIRE: That is an entirely appropriate request, I think, your Honor,and I will answer it this way: There were a great many witnesses whotestified in the grand jury. Some of them were known to the defendant Ostrer and, indeed, were associates of the defendant Ostrerin one way or another. Whether the testimony of any of these people was exculpatory or not is, to say the least, a matter of some debate, but I will certainly identify witnesses who might potentially be considered by Mr. Edelbaum to be prepared to give exculpatory testimony.

Just so that it is clear that the government is not hiding the identity of any witnesses, William Kilroy testified before the grand jury, Lee Evans and Aubrey Moss testified before the grand jury , Seymour Greenfield testified before the grand jury, Dina Gelman, Ostrer's sister, I believe testified before the grand jury. I do not believe that Mr. Ostrer's wife testified before the grand jury, but I might conceivably be in error there. The government does not consider -- oh, Henry Brown testified before the grand jury.

The government does not consider the testimony of any of those witnesses exculpatory on any material issue in the case. We have reviewed their testimony with that in mind. But it may be that Mr. Edelbaum would consider in his own mind that some of the things that some of those witnesses had to say might in some way be helpful towards his defense. These are witnesses that are all familiar to Ostrer, so their identityis no surprise.

MR. EDELBAUM: I respectfully request that the grand jury testimony of these witnesses be produced for my inspection or in lieu thereof for the Court's inspection to see if the intersts of justice under Brady

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v. Maryland the Court might be constrained after perusal of this testimony to turn over such material to the defendant Ostrer.

MR. MC GUIRE: Our position on that, your Honor, is twofold. First, the government strenuously takes the position that under no circumstances shouldtestimony given before a grand jury or the SEC or anywhere else, for that matter, be turned over to the defense. The government considers that its obligation under the Brady line of cases is to avoid either purposefully or by inference keeping the existence of exculpatory evidence from the defense.

The government would not object if the Court deems it worthwhile to produce the grand jury testimony of those witnesses for in camera inspection, but since the names of the witnesses are known and I suspect also the general tenor of their testimony is known to the defense, I don't see, frankly, that that would serve any useful purpose.

MR. EDELBAUM: Your Honor, I respectfully request that the Court direct that the Court be furnished, first, with this testimony, and that the Court then make a decision as to whether or not it should be turned over. In the event the Court, after perusing it, should decide it not be turned over, that they be marked and sealed as a court exhibit for possible review in the event of an adverse verdict against the defendnt Ostrer.

I have had this done in other cases I have tried in this court. I don't know what your Honor's practice is. But I am only saying this is something which has happened and at the times it happened it happened at the end of the government's case.

THE COURT: In any event, I think they should be furnished to the Court, I think they should be marked for identification.

MR. MC GUIRE: Very well.

THE COURT: How extensive are they?

MR. MC GUIRE: In no case are they very extensive transcripts, your Honor. I don't think that any of these witnesses testified for more than about 20 pages of transcript.

Now, I could be a little in error there, but I am not much in error. I suppose that the testimony taken in its whole might consume in the neighborhood of 70 to 100 pages.

THE COURT: You don't have the transcript available?

MR. MC GUIRE: I don-t have them available in court, your Honor, but I cna readily get them. I would suggest, most respectfully, that since the defense case will be going on this afternoon, we could await that perusal of them by the Court.

THE COURT: Would you call your office and alert them so that they can have them available for you at the first recess?

MR.MC GUIRE: I will send Mr. Goldman downstairs. He knows there they aer and he can pick them up and I will have him bring them into court.

MR. GOLDBERG: May I be heard, your Honor?

THE COURT: Yes.

MR. GOLDBERG: Without restating the ground of Mr. Edelbaum's motion, may I also join in it with respect to the defendant Dioguardi and ask that whatever has been stated by Mr. McGuire as part of his disclosure with resepct to the defendnt Ostrer, he should also be directed to make that disclosure as to the defendnt Dioguardi and myself comparable to those being furnished in connection with Ostrer should also be furnished in connection with Dioguardi.

MR. MC GUIRE: The government does not know of any testimony or any other evidence that could possibly be considered exculpatory with resepct to the defendant Dioguardi.

THE COURT: You have given us a list of witnesses.

MR. MC GUIRE: Yes.

THE COURT: Are there any other witnesses that are mentioned in connection with regard to Dioguardi?

MR. MC GUIRE: A great many, your Honor. As your Honor knows, this grand jury investigation was a lengthy one and resulted in a number of indictments besides this one. A great many witnesses testified during the course of the investigation and substantially on matters that had nothing to do whatever with the issues of guilt or innocence in this case.

THE COURT: Very well.

MR. GOLDBERG: Your Honor,could I be heard on one additional matter?

THE COURT: Sure.

MR. GOLDBERG: Your Honor directed no colloquy between counsel.

THE COURT: That's right.

MR. GOLDBERG: In the zeal of advocacy I of course have been guilty of violating that. But the violation by the government of that admonition disturbs me because it injects two points in this case, the credibility of the government, A, when I was cross-examining a witness with respect to what his involvement was, the prosecutor urged that it was mudslinging and implied by that remark that what I was saying was not true. In addition, when I asked the witness Schoengold whether he was a defendant in a one million dollar lawsuit brought by a company that had been busted out by him and his confederates and whether he had any expectation that the government would intervene in his behalf, Mr. McGuire, with a thrust of his hand downward and a loud noise on the desk, said "That preposterous."

That in effect is testifying, injecting his own credibility into the case. I hope that your Honor will, of course, handle this in the charge to the jury, but I don't think anythng should call for any affirmative statement by counsel that indicated his belief in the truth or falsity or the propriety of the question in terms of whether there is a foundation for it in front of the jury. I don't think I have been guilty of that.

THE COURT: You have made your record.

MR. MC GUIRE: I might add, your Honor, on that point that I asked Mr. Goldberg if I could examine Dioguardi's Exhibit D, which was marked for identification during the course of the examination of the witness

Schoengold and which led to that question to which Mr. Goldberg has referred, and it appears that Dioguardi's Exhibit D is indeed a complaint in a civil lawsuit but it does not name Schoengold or, indeed, any other individual as a defendant.

Mr. Goldberg has informed me, and I have no reason to doubt his information, that Schoengold was indeed named in another lawsuit, but the record thus far showed no foundation whatsoever for that question and even if it had, the question was improper, as your Honor ruled.

THE COURT: It was.

MR. GOLDBERG: I am not rearguing it --

MR. MC GUIRE: Might I finish?

MR. GOLDBERG: I am sorry.

MR. MC GUIRE: I apologize for what might have been an excess in my response, but it seemed to me the question was so grossly improper I just couldn't refrain. I beg the Court's pardon but I think your Honor's instructions to the jury have sufficiently taken care of it.

MR. GOLDBERG: Judge, I just want to say this to you and I will stop. There is a federal court action that I have in my file, Newton & Company against all of the Imperial named defendants, including Schoengold. Mr. McGuire is quite right that I had pulled from my file the wrong complaint but if there is any question or if you harbor any view I might have been acting without a proper foundation or attempting to mislead you or Mr. McGuire I will produce that document. I want your Honor to know there was a lawsuit that was inquired about in the other trial and I don't want you to think whatever else you think about me that I have misled you into thinking that there was a complaint against Schoengold for a million and a half when there in fact was not, because there was such a lawsuit.

THE COURT: I think you have all made the record abundantly clear. I see no need to comment.

MR. EDELBAUM: I am prepared to go forward with my next witness and dependent on what your Honor's ruling would be on the Brady material, if your Honor's ruling is that I am not to have it, that would be one thing and I would have one more witness after that. But I would not like -- I am prepared to go through with my entire -- with respect to this one witness, the first witness, and I would request that there be a recess between the next witness for your Honor's ruling so that I won't have to rest my case and then be up in a vacuum, because I like to rest and be done with it when it's done.

THE COURT: How long will your first witness take?

MR. EDELBAUM: My direct shouldn't take more than 15, 20 minutes, your Honor.

THE COURT: And how long would your next witness take?

MR. EDELBAUM: 20 minutes.

THE COURT: That is 40 minutes.

MR. EDELBAUM: Yes.

THE COURT: How long will the cross take?

MR. MC GUIRE: I haven't any idea who his witnesses are.

THE COURT: 40 minutes, perhaps?

MR. MC GUIRE: Mr. Edelbaum has said that one of his witnesses will be his associate, Mr. Wynn. I would anticipate that my cross-examination of Mr. Wynn would be very, very brief, if he testifies as I expect him to.

THE COURT: I will also alert you that perhaps we are going to start summing up today.

MR. GOLDBERG: I am ready, your Honor.

1 pm

(Proceedings continued in open court with the jury in the box.)

MR. GOLDBERG: The defendant Dioguardi rests, your Honor.

MR. EDELBAUM: May I proceed, your Honor.

THE COURT: You may.

MR. EDELBAUM: Mr. Clerk, may I impose upon you to call Mr. Jones to the stand.

CLARENCE B. JONES, a witness called on behalf of the defendant Ostrer, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EDELBAUM:

Q Will you please speak loud enough so that the last juror can hear you?

MR. MC GUIRE: I notice the windows are open again and we have the construction noise outside. Perhaps closing the window will help.

Q Mr. Jones, what is your business or your occupation?

A I am the editor and publisher of the New York Amsterdam News.

Q Do you have any other business?

A Well, I am a lawyer but I don't practice, and

THE COURT: 4 is denied, and 5 is denied. 6 is granted and 7 is granted.

MR. EDELBAUM: Your Honor, may I confer with Mr. Goldberg for one minute? I want to ask him one question.

MR. GOLDBERG: Your Honor, do I understand that your charge doesn't include any expectation of reward as part of the credibility?

THE COURT: No, it doesn't talk about it in those terms. I thought I was very clear. I am going to charge the ordinary, garden variety, traditional, cautionary instructions concerning the value and the credibility and the weight to be given to an accomplice's testimony.

MR. GOLDBERG: Most respectfully, I don't know if it is appropriate to burden the record, but there is a difference between an accomplice and somebody who is testifying with an expectation of a reward. They are not the same.

THE COURT: You will have your opportunity to make whatever exceptions you do after the charge.

MR. EDELBAUM: May I just confer one moment?

(Pause.)

MR. EDELBAUM: May I see the requests? I think there is a request about failure to take the stand.

6

(Proceedings continued in the courtroom with the jury in the box.)

THE COURT: You may proceed.

MR. GOLDBERG: May it please the Court, Mr. Foreman, ladies and gentlemen of the jury:

We have now reached the point, as the Court told you, where each side sums up what they believe that the evidence or lack of evidence shows in this case. Just so there be no confusion, I go first, followed by Mr. Edelbaum, and then the government goes last.

During the time I talk to you government counsel may take notes and in his summation may comment on what I say in my summation if he chooses to do so, but I have no opportunity under the law to get up and respond to what he says.

In short, this is the last time under the law that I will have an opportunity to talk to you. The law does not permit any rebuttal by me, and so I say this lest there be any confusion, that any juror may say, "Well, why didn't Mr. Goldberg get up and answer this?" Or "Why didn't he answer that?"

I will have to rely on your ability in the break between today and tomorrow -- Mr. Mc Guire speaks tomorrow -- to keep in mind some of my arguments as government counsel addresses you tomorrow morning.

Now, before I discuss what the evidence in this case shows, as I believe, I just want to cover by way of mention just a couple of points that have been touched upon by the Court and the Court will deal with in its charge. I am not here to discuss the law. That is solely the province of the Court. The questions of the effect of the indictment, the presumption of innocence, the burden of proof, will be dealt with by the Court. Suffice it to say, that the defendant John Dioguardi is presumed innocent; the burden rests upon only one person in this case, the government, to prove anything, if, in fact it can. The defendant Dioguardi by his not guilty plea contends that the government has not proven any guilt of his because of his innocence by proof beyond a reasonable doubt, as the Judge will explain that to you tomorrow.

While the government has the burden of proof, I am not required under the law to prove anything. The defendant stands protected by the presumption of innocence and his not guilty plea.

Now, I want to touch upon a point. At the beginning of this trial in the course of selecting a jury the question was posed whether any juror had read or heard the name Johnny Dio. Several jurors indicated that they had. But you promised the Court and counsel that you would discharge your responsibilities by deciding this case on the basis of the evidence or lack of evidence in this case, not on the basis of what you may have read or heard from any source outside of the court. A man's guilt or innocence in a federal court is decided on the basis of the evidence or lack of evidence from the stand or such evidence or documents that come into evidence after being passed upon by the Judge. Nothing else in a federal court. You are not called upon in any case to decide whether you like a particular defendant or his counsel, whether you would want to invite him to your home or not. Those are issues and those are things that you can consider when you are not sitting as jurors, when you don't have this awesome responsibility of deciding a case based on evidence.

Whatever a man be in our society, whether he be a good or a bad man, he is entitled to a fair trial based on what has been adduced or what has not been adduced in the court, free from prejudice for or against. I can't tell you that everybody is able to wipe from their minds prejudice. But as jurors you must control any inclination to prejudice and limit yourself to the evidence.

Now, the role of jurors is sometimes very difficult. You are told to wipe something from your mind that might otherwise cause you to feel prejudice, sympathy or emotion if you are sitting in a living room. The question, no doubt, comes to your mind whether youare able to live up to that commitment that you gave to the Court and counsel to render a fair and impartial verdict. I don't want at this late hour, five after five to go into any philosophies, but one man who was being heralded one day as an extraordinary American, a great American, said there are no great Americans in our country, we are just a country of ordinary people, and that at various times some of us are called upon to meet the demands posed by an extraordinary event and to give that little extra in the way of effort or that little extra in the way of self-control.

This is such an extraordinary event. You will be deciding the fate of another human being. This is not something that you do in a living room. Jury service is an extraordinary event. You must exert the kind of control or effort to meet the challenge posed by this event and not allow yourselves to be weakened by giving in to any prejudice, by what you may read or hear.

Now, another obstacle that I would like to talk about, only because I suggest that by talking these things openly it affords you a better opportunity to recognize the possibility that you might otherwise succumb to prejudice if it were not talked about, and that is the biggest obstacle that you may have, the most troubling thing that you may have in giving a fair and impartial verdict to my client, the fact that while the government called a number of witnesses, albeit crooks, thieves and con men, the defendant Dioguardi called none, and he didn't testify, he rested, as is his legal and constitutional right, on the presumption of his innocence. And what you may draw from that the Court will tellyou.

/2 pm But you know, the defendant Dioguardi is represented by a lawyer. The legal decisions are my responsibility. You are here to decide the facts. The question of whether the defendant Dioguardi should take the stand or not take the stand is a legal decision made by counsel. That has no weight or importance to you as jurors. That is a decision arrived at by counsel, recognizing that it is the burden upon the government to prove its case by proof beyond a reasonable doubt. And where the defendant and his counsel feel that that the government has failed to destroy or tear down that presumption of innocence, the government's case should fall of its own weight, because the government has failed to live up to its commitment.

I suggest to you that when I get into the government's case, you will share the view with me that the evidence offered by the government should leave you with a reasonable doubt as to the guilt or innocence of John Dioguardi. The Court will tell you what your responsibilities are if you entertain such a reasonable doubt; the Court will tell you what a reasonable doubt is.

I suggest to you, ladies and gentlemen, that if you would hesitate to act, if this were a matter relating to your own personal lives and you were called upon to pass upon the believability of people such as Fred Goodman, Steven Schoengold, Mihcael Hellerman and Murray Winter, if you would have a reasonable doubt with respect to whether you ought to believe their word or not, if you would hesitate to take their word if it had to do with something of importance to yourselves or someone you loved or cared for, you ought to hesitate to take their word in a case as important as this, where another human being's fate is at stake.

For example, knowing now what you know about Michael Hellerman, knowing what you know about Steven Schoengold and Fred Goodman and Murray Winter, you would hesitate to take their word if a relative or loved one were on trial. I suggest you ought to have a reasonable doubt, and that Johnny Dioguardi is entitled to the benefit of that reasonable doubt.

You see ladies and gentlemen, as I will deal more fully with this, I suggest to you that without taking the word of Fred Goodman, Michael Hellerman, Steven Schoengold, and Murray Winter, there is no case against John Dioguardi. No matter how many times the prosecutor may read from their testimony, I suggest to you that you ought to hesitate to take the word of these proven thieves.

I want to give you an example.

Just suppose for a moment that Michael Hellerman and his disciples called you up and told you that they had a good stock deal and they wanted your life savings, would you hesitate to take their word knowing what you know about them? Would you hesitate to act were Michael Hellerman, Steven Schoengold to call you and tell you that they had a good deal? Now, really, doesn't that question really answer itself, knowing what you know about these people now? Can you really say to yourselves that you wouldn't hesitate to act if they asked you to do something relating to a matter of importance to yourselves? I suggest to you that if you would hesitate to take their word in the example I just gave you, you ought to hesitate to take their word in this case. I say to you that I have impressed you with the concept that you ought to hesitate to take the word of the people who testified on this stand where the fate of my client is concerned.

I ask you now to trace with you and recall the proof has shown with respect to the other people who have not hesitated to take their word, but acted on the words and promises made by the thieves who testified before you.

Remember the Cohens, friends of Fred Goodman, people who assumed his word was as good as gold? They apparently didn't hesitate to act, but acted and lost how much? Do you remember what Fred Goodman told us? A quarter of a million dollars. They didn't hesitate to act. Remember the poor fellow, Bruce Halpern? In just a few years he had doubled his capital in his brokerage firm from 40,000 to 90,000, until Michael Hellerman made promises to him, and Bruce Halpern acted on those promises and the representations made by Hellerman. Remember what happened to Bruce Halpern when he didn't hesitate to act/and accepted the word of Michael Hellerman? He was destroyed, barred by the Securities and Exchange Commission, lost over a hundred thousand dollars, his firm went out of business. He didn't have the benefit perhaps of what you have in terms of knowing the background of Michael Hellerman and his disciples. If he had hesitated to act he might not have been destroyed.

Mihcael Hellerman told you himself under cross examination that the people who took his word, the people who did not hesitate to act, but relied upon his word,

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suffered severe financial loss.

Remember Walter Tepper? He didn't hesitate to act, but fell for the con game. Remember that laughing session at which Schoengold was present, Morris Winter was present, and Michael Hellerman was present? Tepper apparently didn't have the sense to hesitate to act.

And what happened? 4,000 shares of stock, Michael Hellerman tells us, were purchased from Walter Tepper and not paid for, and Newburger, Loeb had to eat the stock.

But Walter Tepper didn't have the benefit, perhaps, as you do of knowing the full background of Michael Hellerman and his disciples. Perhaps were he in your position, had he hesitated to act, Newburger, Loeb would not have been out all that money.

In short, what am I suggesting to you? I am suggesting to you that the records in this case shows that the people who took the word of Hellerman and his disciples, who failed to hesitate to act, but relied upon their promises and words, were destroyed.

But the line of Hellerman's team was not limited to Tepper, to Halpern, to the Cohens. You will recall that Mr. Edelbaum brought out that to his own brother-in-law, Joel Goldfarb, Michael Hellerman said that Belmont was the IBM of the future. And you remember, wrapping a person around with that tape and someone getting a haircut up there? To his own brother-in-law Michael Hellerman did not hesitate to lie and cheat and sold him the worthless stock of Belmont.

And what about Soldano, his own confederate? Steven Schoengold told us that Michael Hellerman didn't hesitate to lie to his own partner, Soldano, by telling him that the stock that was sold for 37 was sold for 31, so that he could steal from Soldano 6,000 dollars, of which Schoengold got $900.

In short, ladies and gentlemen, search the record. If I have missed a couple of situations, remember them. And when the government argues that you should not hesitate to take the word of these four people who testified here because they each say the same thing and each corroborate each other and dovetail to each other, say to yourselves, "By God!" Say to yourselves, "Look what the record shows happen to other people, brokers, friends, relatives who didn't hesitate to act and were destroyed, and you want us, Mr. Prosecutor, not to hesitate to take the word of these people whose record shows that total destruction has fallen upon anybody who did not fail to hesitate to act?"

I say to you, it's been a short trial, but you have heard a great deal, have you not, about so many lies, the lying and cheating and stock manipulations.

You learned about the stock manipulation of Belmont Franchising, you learned about Hellerman's involvement in Tabby's International, you heard about stock manipulations in Fleurette from Fred Goodman, you heard about Home of Country Furniture, you heard about Computer Microdata and Automated. These men all testified to stock manipulations involving those stocks.

That is a very easy thing to say, stock manipulation. You sat in on one stock manipulation and you saw the total destruction caused to innocent people in just one of these ventures. I say to you, ladies and gentlemen, how much lying and how much cheating, how much treachery must a human being be guilty of before reasonable people like yourselves can say to yourselves, "I just can't take their word; I must hesitate to act on their word where the rights of another human being are involved."

I say to you the government has offered witnesses and the cross-examination has elicited how totally and completely unworthy of belief these four people were, and the government on cross-examination has revealed how they didn't hesitate to lie or cheat when their quest was to make money, how likely they are to lie and cheat when something in the rainbow is much more important than money, namely, favored or expected favored treatment from the government. How can you, when human rights are concerned, fail to act? Do you recall the opening statement of counsel at page 31 when government counsel said that it would BE producing witnesses whose testimony you would have to take "with a grain of salt"?

I should have told you you are not to decide this case on the basis of whether you think Mr. McGuire or myself are good or bad or honest. We are just lawyers doing our job. Government counsel is not a witness. Government counsel was not a witness to any of the purported or alleged events. He did not appear as a witness on the stand. You are to zero in on the credibility or lack of credibility of these people: Michael Hollerman, Steven Schoengold, Murray Winter and Fred Goodman. The case, I suggest to you, with respect to

1087

my client rests upon their word with no documentary or supporting evidence from any impartial, unrelated, unpolluted source.

How are you then to make a decision as you sift through the testimony of these four people? I should point out to you government counsel no doubt has at his command many investigators and a staff and no one was produced on the stand to support any of the allegations or assertions made by Michael Hellerman that he had arranged a mortgage transaction on Dioguardi's home. Was there any support for that? Or that he had made an investment for the defendant Dioguardi in a keychain company; was there any support for that? Did you see any witness produced to support that? Is there any witness to support the story that Dioguardi and Hellerman met at Ponte's or Pier 52, just one little witness or one piece of supporting evidence?

I suggest to you that you can have a reasonable doubt, you can hesitate to act not only because of the evidence, the polluted evidence, that you saw but by reason of the lack of evidence. The government's evidence is offered solely through people that are best described as rancid, rotten to the core. Is that too harsh? Is that mudslinging when I refer to them that way? No.

The force of truth has propelled the mud from the ground and splashed it on the face and body of the witnesses. It's the truth that they have been guilty of countless crimes and deceptions at fairly young ages. They have done a lot of damage to people who didn't hesitate to act but took their word.

Now, how do you decide whether to believe somebody? You don't lay outside the jury room your common sense. You have been called upon in your life on many occasions, I am sure, to decide whether to believe somebody. It's not a new experience. Thismight be an important experience, as I said, far more important than something that takes place in the living room, but you make decisions in your life about whether to believe or not to believe somebody. How do you do it in this case? You will have the right to consider one of the basic principles. What is the background of the witness? Has he been convicted of a crime? Because conviction of a crime might be taken by you as affecting your decision whether to believe him or not, particularly when his convictions relate to fraud and deception, to crimes involving deceit and lying and telling untruths.

Another thing you might ask yourself, as I am sure you do in your daily lives: Is this person telling me something hoping to gain something? Has this guy got an axe to grind?

What does the proof show about each of these witnesses? How tedious it is to go over what the proof shows about each of these witnesses because their conduct is so terribly long and involved. The mud is so thick.

Fred Goodman was first called to the stand, and, if anything, he told you that Hellerman was a fat swindler, a swindling bum and a crook. He told you that Hellerman's word could not be trusted. He testified to having met Hellerman in 1969 and having used INTRODUCED Murray Taylor, about whom I will say a little more later, Murray Taylor to Hellerman in connection with a stock manipulation known as Imperial.

What does the proof show with respect to Goodman? IS That the kind of witness who if you knew all about him you wouldn't hesitate to act if he called you up and asked you to give him his life savings on a stock deal? What does the proof show? Since July, 1969, since he returned to the city in a year and a half his crimes ran the whole spectrum of fraud and deceit. Despite his protestations to you, do you recall that he is an honorable person? He had the gall to look you straight in the face and said "MY word is as good as gold."

What did he tell you? He admitted that he lied and cheated persons he didn't care about. That's what he said. "I lie and cheat to people I don't care about."

Do you know as you sit here whether he cares about you? Are you to sit there hoping that you are of special imporatance, that he cares about you and he wouldn't lie and cheat to you? He said that. "I didn't hesitate ~~and~~ to lie to people I didn't care about."

Oh, he used words, weasel words we call them, to hide his true code. He fabricated stories, he resorted to a hoax, do you remember that, and a scheme when dealing with other stock swindlers. He toldus that he got $20,000 from George Drykerman, telling Drykerman he was going to use it to bribe brokers, and he kept at it. He admitted that the friends of his, the ~~Colonels~~ Cohens, who thought his word was as good as gold, lost a quarter of a million dollars. And what about his criminal conduct? The swindles of Tabby's, Belmont, Imperial, Vendotronics. Does it end there? Is he just a stock swindler? No. He admitted participation in the unlawful possession of $300,000 in stolen treasury bills. A tidy sum for ordinary human beings. He admitted participation in the receipt of $70,000 of property stolen from a brokerage firm. And unlike us ordinary people who perhaps have no expectation of not being prosecuted like he does, he never filed a tax return since 1965.

And with it all do you remember what he said, because if you have any hesitation, later on you can ask for it to be read, he said he doesn't want to go to jail for anything. Can you think of anybody who belongs in jail more than Fred Goodman, for whom jails were constructed other than a person like Fred Goodman? He doesn't want to go to jail for anything.

Now, I say to you aside from the fact that hsi record shows a long record of criminal behavior and immoral conduct running from theft to stock fraud which in and of itself I suggest should cause you to hesitate to take his word were it a matter relating to your own lives and you had to make a decision whether or not to take his word, look what the proof shows his rewards have beenfor being up there on the stand. 71 counts in the Imperial swindle he expects to be dismissed. 39 counts against him in the Belmont swindle he expects to be dismissed. Two counts in the stolen brokerage case, dismissed.

He told us at page 317 of the transcript that the government committed itself that he would not be prosecuted in connection with the stock manipulation of Vendotronics and that the government conferred on his behalf with Mr. Hogan's office. I suggest to you the thrust of my attack on each of these four witnesses is this: I contend that you should hesitate to act where you are dealing with a personwho has a history of immoral and criminal behavior when placed in his path is the expectation of receiving rewards or payment for his testimony.

MR. MC GUIRE: Objection to that.

THE COURT: Objection sustained.

MR. GOLDBERG: The expectation of a reward. Do you recall that incident when in February of 1970 he said Anthony Soldano mentioned he had grown up with John Dioguardi and when it was pointed out that this very question of all of his conversations with Soldano was asked of him in the trial in the fall of 1970 and he never mentioned that? You can view that as an added kicker by Goodman, hoping to solidify his deal with the government and gain the favor of the government.

I suggest to you if Fred Goodman would not hesitate to lie and cheat in his quest for money he would not hesitate to do the same and lie on the stand if he thought it would solidify his deal with the government. It is the combination of the record of immoral behavior and his clear bias in favor of the government by rewards he hopes to secure that ought to cause you to hesitate to take his word and reject it as untrustworthy.

Let me give you an example, because this expectation of reward andthis prior criminal behavior permeates this entire case wit each of the witnesses. Suppose you were sued as a defendant in a civil case, in an accident case, and the witnesses against you were criminals, with long criminal records, involving fraud and deception and the telling of untruths without hesitation, and it was also developed that they were testifying in the hope of securing some reward from the party who they testified for, wouldn't you be shocked that their word would be accepted, that a fair and impartial jury wouldn't hesitate to take their word where the witnesses against you were criminals who were testifying in the hope of a reward, a reward far more important than money -- freedom? Fred Goodman doesn't want to go to jail for anything. He pleaded guilty to four cases. As he sits here in this courtroom each case subjects him to the risk of five years, five years, five years, five years imprisonment, but he doesn't want to go to jail for anything. Put yourself in the position of a defendant in just a civil case where human liberty isn't involved, where the witnesses against you were confirmed criminals testifying in the hope of securing a favor or a reward from the other side.

How outrageous it would be to think that someone wouldn't hesitate to take their word. How about Michael Hellerman? I am not going to go over it.

1095

gwrf 1

There is a certain one necessary about all of these witnesses. They are all the same, their records are the same, they are all related through stock swindles, interrelated. What does the record show about Hellerman? That he stole from his own confederate Soldano, that his own confederate who knows him says he is a crook and a swindler and he can't be trusted, Fred Goodman.

Do you remember how many stocks this man admitted to manipulating? Even his own brother-in-law wasn't immune from a lie and a cheat where Hellerman's quest was to make money.

I am not going to burden you with naming all those stocks. I mentioned them to you before. But look what the record shows about his immoral behavior. He participated in a fraudulent scheme to submit checks, counterfeit checks, to a Bahamian bank in the hope of securing a one million dollar reward. The proof shows that Murray Winter was with him, Morris Winter was with him. Morris Winter doesn't know why he was with him. He went to the Bahamas for a couple of hours. You can be sure he didn't take his bathing suit with him, he wasn't there for the sun.

Hellerman was there in connection with a scheme? Winter was also out. All I did was proper. I did ministerial acts. He did corrupt, unlawful acts. But what does it show with respect to Hellerman and the Bahamian Bank? That this man's immorality wasn't only limited to stock swindles. He acknowledged on the stand that he had paid monies which [illegible]ieved were being used to bribe state court judges. D[illegible] recall that? For a young man, do you recall that outrageous behavior? That he had paid money that he believed was being used to pay off State Liquor Authority investigators. He admitted participating in a bankruptcy fraud. The Government dropped the case against him. You remember his deal. He admitted purchasing stolen goods, helping people or helping a person to evade his income tax returns.

What does the record show as to the penalty that he suffered for that? He got a two year sentence. Do you recall how he rattled off that section, 4208A, an A sentence, he could be available for parole at any time. How fortunate we are he may be unloosed or unleashed at any time. When that day comes you have to close your pocketbooks with a lock. Michael Hellerman is on the loose.

In addition to his many crimes he told you he had been ordered by two federal judges in this court to file returns with the SEC but he never did. No expectation of punishment. He counseled Jack Kelsey to file false and fraudulent reports with the SEC. No expectation of punishment. Somebody else didn't hesitate perhaps to take his word or somebody else who is the object of one of his promises. And what happened? Do you remember he said that he was in the office of the United States Attorney and an assistant by the name of Robert Morvillo, he had promised Robert Morvillo that he would keep his nose clean in November, 1970? Did he? He didn't hesitate to lie and to cheat even Morvillo. He committed crimes while promising that he was going to go straight. Need any more be said to indicate the total immorality of Michael Hellerman?

Doesn't the record bespeak of one who has resorted to any untruth, any lie, any misconduct in order to get what he wants? He told you in answer to one of my questions the truth was no hinderance, the truth was no obstacle in his quest for money. He used a word. He admitted being an opportunist.

And he got his reward, didn't he? No prosecution for Globus, no prosecution for Automated, no prosecution for the Bahamian Bank swindle, 71 counts in the Imperial case dismissed against him, 39 counts in the Belmont case dismissed against him, the bankruptcy fraud indictment dismissed against him. And in an effort to win the favor of the government, do you recall that tesimony when Mr. Edelbaum elicited that he had said to Richard Wynn and Ostrer outside the courtroom about that affidavit exculpating Ostrer, that he walked over to the defendant Dioguardi, that little zappo to involve John Dioguardi. You heard Richard Wynn testify, an assistant district attorney. Did that happen? DisCredit the testimony of Michael Hellerman and write it off as another attempt by him in his demented mental processes hoping to win the favor the more he can heap upon John Dioguardi as part of his deal.

What about Morris Winter? The proof shows he violated --

MR. MC GUIRE: If I may, your Honor, I object to that last remark.

THE COURT: Objection sustained.

MR. MC GUIRE: May I ask that the Court instruct the jury that it is no part of Hellerman's deal with the government to commit perjury.

THE COURT: That is entirely true to the best of my recollection. Ladies and gentlemen, I think perhaps I ought to repeat an instruction. Summation is not evidence. Mr. Goldberg is not a witness in this case. He wasn't present at any of the events that he is talking about. This is his view of the evidence, these are his comments. Your recollection is binding about the facts. Neither comment by the Court nor counsel about any fact is binding upon you. It is your recollection and only your recollection that is binding, and so you are absolutely and totally and ocmpletely free to reject any comment by Court and counsel on the facts and as to the law. I have made it abundantly clear, I think, that the Court is the source and the fountain of the law and you will take the law from the Court and only from the Court.

Is that clear?

MR. EDELBAUM: May I apporoach the side bar or may I reserve it until later

THE COURT: You may reserve it until later. I see no reason at this moment to approach the side bar.

MR. EDELBAUM: Thank you.

THE COURT: I see no reason to correct my comments in any way.

MR. GOLDBERG: If anything I have said doesn't comport with the facts --

THE COURT: I have already made that abundantly clear. Carry on.

MR. GOLDBERG: And government counsel was not a witness to any of the events. Summation represents my attempt to marshall the events just as he will do.

Do you recall the proof with regard to Morris Winter and his attempt to weasel himself out of any liability? The lawyer who didn't hesitate to violate his oath is a lawyer, to commit crimes in connection with At Your Service Leasing, but who maintained throughout a limited role with respect to Belmont, eight telephone calls, ministerial, mechanical duties,,nothing more? Do you recall what Schoengold told you he said? When the stock reached the 20s, Morris Winter said, "By God, if I get caught I could go away for life for what I have done."

That wasn't the talk of somebody doing mechanical ministerial duties, was it?

Do you recall Schoengold tell you that Winter was present when this heartless group of people talked about how they had taken Walter Tepper again, heaping upon him loss because he didn't hesitate to act.

Am I incorrect when I say to you that each of these witnesses testified that they had the expectation of favored treatment or a reward? Why is it necessary to give these witnesses such enticements? Good man is not going to be prosecuted for Vendotronics. Hellerman is not going to be prosecuted for stock frauds. If it is the truth we want, why must there be enticements?

Steven Schoengold told you that virtually every day while at J.M. Kelsey he was involved in the manipulation of stocks under the direction of Michael Hellerman. I suggest to you he was a flunky of Hellerman, that Hellerman had surrounded himself with lawyers who lacked morality to act as law abiding citizens, Morris Winter and Marty Roth, and he had a coteric of followers, Michael Hellerman did. The proof shows, does it not, Steven Schoengold, a flunky that executed his orders.

What does the record before the SEC show with respect to Steven Schoengold? Who does the record show he was trying to protect as he lied countless times and committed perjury before that body? Examine that testimony and you will see that at each step of that inquiry by the SEC there was a concerted effort to hide and protect one person -- his boss, Michael Hellerman.

Each of these witnesses, Schoengold, .Winters, whether it is a mink cape, money from Mike, these are not separate, independent witnesses who come from unpolluted sources. There is something very magic about the month of November, 1970 because it is November 1970, when Michael Hellerman makes his deal with the government. It is November, 1970 -- withdrawn.

It is November, 1970, when Steven Schoengold suddenly decides to cooperate and it is after Hellerman makes his deal that Morris Winter seeks out the government.

Each of the government witnesses besides being convicted felons whose crimes are not ones of violence -- the crime of violence might not so heavily weigh on your mind when you consider whether to believe them or not, their crimes involve lying and deception that brand them unworthy of belief, too risky to take their word.

The government wanted to assure that the testimony of these witnesses would be uninfluenced by any sword hanging over their head. Why hasn't Fred Goodman been sentenced? Why hasn't Murray Winter not been sentenced?

THE COURT: I think that is completely improper and objectionable. I suggest you know that.

MR. GOLDBERG: If you want me to respond, your Honor, or I will follow your directions?

THE COURT: I suggest you do.

MR. GOLDBERG: I will.

THE COURT: The sentence of Murray Winter is pending in this court.

MR. GOLDBERG: Goodman admitted pleading guilty in September over a year ago but he has not been sentenced yet. You are not dealing with ordinary people when you analyze the testimony of these four. You are dealing with people who the proof shows had the ability to get money not by force or a gun or threats or violence. You are dealing with con men who the proof has shown to have been expert at getting people of all walks to take their word: Brokers, lawyers. They give you a little charm, they sell you a story, and with people like Fred Goodman, Michael Hellerman you wind up opening your wallet and giving them the money, they are so convincing.

Do you recall when Michael Hellerman told you about that Trimatrix stock? I don't want to burden you about reading it. He had developed a new system where everybody would have a particular six coded number and because of the permutations and combinations everybody in the country would have a separate identity that could solve the airline and restaurant problem. My God, if he had called you you might have invested in such a magnificent device if you didn't know who and what he was.

Look at his testimony, how clever Michael Hellerman is. He doesn't refer to the defendant Dioguardi as Mr. Dioguardi or the defendant Ostrer as Mr. Ostrer. Louie, Johnny. That's for a purpose. The purpose is to make you think that these are his buddies. He resorts to the first name approach. It is a con technic, I suggest.

You can't allow yourself, as you analyze the testimony of these four people, to be influenced by how they look, how nicely they are dressed, how efficiently they handle questions. You must, I say, focus instead not on what they look like, not on what they say but what the record shows has happened to the people who took their word but you are being asked to take their word and see how they were damaged. They raised their hand and took an oath to God to tell the truth. It was wasted, I suggest, on them. Steven Schoengold took that oath, didn't he, before the SEC? Did it cause him to hesitate to lie? They lack the basic morality that could give you a settled feeling of confidence gwbr 6

in their worth.

I suggest that when in 1970 Michael Hellerman secured for himself a deal in which he hoped to expect favorable treatment his disciples followed. And what were the dynamics in Michael Hellerman's mind? It is a basic thing that you as parents hav experienced with children or infants. When caught with che hand in the cooky jar, it is someone else that did it. Michael Hellerman seized upon somebody else he thought would be salable, somebody he might interest the government in prosecuting, and he seized upon Johnny Dio.

He might not have walked himself out with such a deal if he said' I am involved in this case with Irving Greenberg."

But Johnny Dio was salable. And when he got that deal, I suggest to you he opened the floodgates of perjury.

You heard a lot about a thing call a bust-out. Do you recall that bust-out? What is a bust-out? A bust-out the witnesses told us in words or substance -- of course, I can't be expected to verbatim recall everybody's testimony, but you can have it read back if you doubt my word. A bust-out in effect was where the stock swindlers, Schoengold, Hellerman, Goodman, avoid monetary loss to themselves by shifting it to an innocent person or an innocent broker. It is the shift of the risk of loss to an innocent person. That is a bust-out in the stock market.

Do you know what you witnessed here, ladies and gentlemen? A bust-out in a different sense. Each of these witnesses was seeking to avoid not the loss of money but the loss of freedom by shifting responsibility, by bargaining in the hope of securing favorable treatment for themselves by complicating somebody they thought would be of interest to the government.

You see, each of these witnesses said that they don't want to go to jail. Michael Hellerman, Fred Goodman, Murray Winter, Steven Schoengold don't see themselves as belong in jail. Jails are made, I suggest they view it, for the poor, somebody who steals a purse but not for the con men who steal a million dollars.

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How thoroughly heartless, how outrageously vicious these four were shown to have been before you when they acted laughing, gratified, enriched, joyful about the fact that they had taken somebody else again. Don't make them happy, joyful because they have taken 12 more people. Don' fall for this group story, because they each backed one another up. You can be sure that when they took brokers like Tepper, Halpern and any other of their victims they each supported each other. This is not a pick-up squad that the government presented to you on the stand. They have worked together, the proof has shown, before as a team, supporting and corroborating, if you want to use that word, each other in lies, in swindles, of which this is just another.

Don't think that it is easy to take the financial community. The professional stock manipulator does not lack skill. What I want you to do is recognize what makes a successful manipulator, and thatis his ability to promote or to sell a phony scheme without any conscience, without any regrets or remorse about the harm or damage cause through somebody else from their false statements.

The suggestion has been made that it is time to getthe people behind the scenes. Maybe. I want to pick out some points on the testimony if you're looking for somebody behind the scenes. Who were Hellerman's confederates

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that he was seeking to protect? What does this proof show? What does it reflect with respect to that shadowy figure known as Murray Taylor?

You have heard his name mentioned, have you not? You recall with me that Fred Goodman said that Murray Taylor was a professional stock manipulator. Fred Goodman admits being involved with Taylor in Lanai Electronics, being involved with Michael Hellerman in stock frauds together. Morris Winter says of course h saw Michael Hellerman and Taylor together and they were in stock frauds together.

What does the proof show about Murray Taylor? Now Bruce Halpern said he had his office where? 103 Park Avenue. Murray Taylor, 103 Park Avenue. Morris Winter said he saw Fred Goodman at meetings at a coffee shop at 99 Park Avenue, which Murray Winter acknowledges may have been the side entrance to 103 Park Avenue. And as to Fred Goodman, where did he first hear about the stock of Belmont Franchising? You recall. Murray Taylor and George Drykerman. And when the fraud took shape, George Drykerman was introduced to Murray Taylor or was introduced by Murray Taylor to Fred Goodman, and then of key importance, that meeting on the second week in February 1970, where the fraud was laid out in its full dimensions and discussed. Do you remember where that took place? The mechanics?

Do you remember? It was the second Saturday in February, Fred Goodman said, and, like Hellerman, he said it took place in Murray Taylor's office with Fred Goodman and Mike Hellerman present.

Schoengold knows Murray Taylor, he testified. He was involved with him in the stock fraud known as Imperial, and that Murray Taylor was married to his uncle's sister, at page 1464 of the transcript, the same Murray Taylor who was involved with Fred Goodman in the company called Concise Holdings. And when you look for the man behind the scenes, recall with me, will you please, that towards the end of March Bruce Halpern did something which Michael Hellerman didn't like. Michael Hellerman said that he was going to set up a meeting with his people, and there was a meeting in a restaurant known as Delsomma's. The purpose was to force Halpern to give back 4,000 shares of his stock.

And his people, Hellerman's people were upset. Who was present? His people? Michael Hellerman, Fred Goodman and Tony Soldano and another man. Who was that other man? One thing is clear, there was no suggestion that it was my client.

You remember Schoengold telling us what Hellerman thinks of Murray Taylor. Murray Taylor is a genius. That is what Schoengold said that Hellerman said about Murray

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Taylor, that he is a genius. He must be a genius to have avoided his just desserts in this case.

An analysis of the proof in this case shows that the government's case is based solely on the word of witnesses who have not only been proved to be dishonest much of their lives, but who were merely following the lead after it was first established by Michael Hellerman after the first plan was put in by Michael Hellerman to try to shift the blame to the defendant Dioguardi and pave their way to the freedom they feel they deserve.

I say to you, not only do their records reflect a total disregard of people in the public marketplace, but without burdening the proof, reflect that even in their dealings with their own fellow thieves they lied and cheated and swindled. What an immoral cast of characters these are that the government would ask you not to hesitate to take their word, what a thoroughly heartless bunch of people. Don't give them, I say, another occasion to laugh, don't allow Michael Hellerman to celebrate the demise of an innocent person. Announce by your verdict, a very simple thing, in effect, that no more will there be a loss, no more will there be a heartache, an unwarranted destruction heaped upon innocent people by the acceptance of the deceit that comes from their mouths.

2

Now, I told you that government counsel speaks last and that I have no chance to answer him. So that towards the end of my talk I have to try to touch on things that he may touch on, anticipate, if you will, the statements that he will make.

A statement may be made that if the witness has wanted to frame Dioguardi they could have done it better. Not so, ladies and gentlemen. The con men know the principal of not gilding the lily, just painting enough there to get your interest and your appetite whetted. They know how to do that without overstating or hard selling. They throw in those added tickets for which there is no explanation why.

When questioned before the Securities and Exchange Commission if John Dioguardi had ever said, "I want 50 per cent of the deal," Steve Schoengold never mentioned it in the Securities and Exchange Commission in his first appearance, never mentioned it in his second appearance, never mentioned it before the grand jury. Do you recall how Steven Schoengold in response to Mr. Mc Guire's questions said, "I was never asked any question about John Dioguardi in the first trial or in the trial in the fall of '72."

Little did he know that I had the transcript perhaps. You recall how he tried to sidestep and parry the blow to avoid being caught in a mistruth.

Well, I don't remember what I said to Mr. Mc Guire a minute ago. I just recall. It was not true. I was not correct.

Government counsel may be expected to say that Mr. Goldberg talked about everything but the facts. "Mud slinging," I think, was the word that I heard somewhere. I say to you the lack of credibility, the utter unreliability, the absolute bad character of the government witness is the key to this case.

You have not seen any evidence remotely suggesting the involvement of my client in this case through documentary proof, through any witnesses whom you could label as honest, reliable. It is the credibility or the, rather lack of credibility on these four witnesses that make up the government's case.

And to the extent that these witnesses' backgrounds would cause you to hesitate to act if it were a matter in your own lives, you ought to hesitate to take their word in this case.

The key to this case is not the story told by those who would lie to save themselves; the key to this case is whether you are going to deprive anybody of his rights based on the words of these individuals, knowing their incredible record and the expectations that they have for favored treatment, and keeping in mind, never forgetting that with all the resources at the command of the government there is no supporting proof by way of documents or honest witnesses to support any aspect of the government's case against John Dioguardi.

Government counsel may say, "But there is corroboration here; there is support; look at the way Hellerman supported Schoengold, and Schoengold supported Hellerman, and Hellerman supported Goodman, and Winter supported Hellerman and Schoengold."

What does the proof show about these supporting witnesses? Winter was Hellerman's legal advisor; Schoengold was Hellerman's flunky. Doesn't the proof support that statement? Yes -- three crooks, three cheats, three con men, three felons each supporting each other. Conceded. Does that indicate truth?

I told you before, you have got a record laid out before you of two weeks' duration that shows that these three crooks, three cheats, three swindlers supported each other time and time again as they deceived people in countless stock swindles. Yes. Never forget the proof has shown that when they worked, when they cooperated, the result is lost to innocent people.

Michael Hellerman made his deal in November of 1970; he made his bust-out deal, as he described it. Murray Winter knew it. I suggest that contrary to Steven Schoengold's statement that he didn't know about it, it is remarkable, too, that he decided to support Hellerman in that same magical month of November.

The evidence in this case is not merely what Steven Schoengold says, but what you make of his testimony. You are not required to believe his protestations that he didn't know that Michael Hellerman had made a deal. You can take his testimony and believe the truth to be the exact opposite of what he says.

Isn't there much support calling on you to do just that? There are the countless acts of perjury unpunished against even Schoengold. And the government would say, "Don't hesitate to take his word; he is corroborated by Michael Hellerman and Winter." Yes.

I asked a question at the outset, "Has anybody read or heard anything about the name Johnny Dio?" I want you to know that anybody in our system, all persons of any race, color or creed, whatever their background, are entitled to a fair trial. No one may have his rights stripped; no one should have his rights stripped when the government has failed, utterly failed -- am I overstating it? -- have they not utterly failed to support the story of any honest or credible witness, any kind of witness that would give you a settled feeling of confidence that you know where the truth is? The government has fallen short of its burden of proof.

You will hear the instructions from the Court as to what your duty is. I say to you, as you deliberate, when you get this case, let their verdict stand as somewhat of a monument, if you will, a testimonial of the fact for all to see.

Perhaps the time has come, the day has arrived -- it might be too dramatic -- but, really, the moment is at hand when a group of honest, intelligent people like yourselves, fairly chosen, will not be swindled because Steven Schoengold looks like a nice little boy; you will not fall victim to the lies of the unsupported witnesses who have testified before you, when you recognize that no documentary proof or impartial witness has been produced before you. Announce, really, without hesitation when you hear the law given to you tomorrow and you deliberate this case, announce once and for all that there is a group of people, however that may shock the likes of a Michael Hellerman or Murray Winter or Fred Goodman or Steven Schoengold, there are people, 12 people who can see the falsity of the story they tell while others didn't, recognize the danger of relying upon their word when others didn't, who will not allow other people to be destroyed by taking their word, which other people failed to recognize. And when you do just that and you recognize that with all the power at its command the government has failed to produce credible proof, that by the presumption of innocence and Johnny Dioguardi's plea of not guilty, in which he tells you he is innocent, I suggest to you that you ought not hesitate to return a verdict of not guilty.

I am finished, your honor.

MR. EDELBAUM: May I approach the side bar?

THE COURT: You may.

(At the side bar.)

MR. EDELBAUM: I respectfully except to your Honor's statement to the jury during Mr. Goldberg's summation that they are the ones who decide the facts in the case, not Court, not counsel, that they have a right to reject any statement made by counsel, and that while that may be good comment as far as it went, your Honor at no time told the jury that they have the prerogative and the right to accept counsel's versions of the facts if they see fit, and I ask your Honor specifically now to instruct the jury in that vein.

THE COURT: I see no reason for doing that. I think in my instructions I will take care of that appropriately and adequately.

MR. EDELBAUM: I think, your Honor, most respectfully, now is the time to do it, in view of the fact that by your statement you have cast doubt on anything that counsel may say to this jury in summation, you have cast doubt on it, and if your Honor refuses my request, I most respectfully and with due deference move for the withdrawal of a juror and the declaration of a mistrial on the ground that I cannot sum up tomorrow morning in view of that statement made by your Honor to this jury, unless it is corrected before I sum up.

THE COURT: Your motion is denied.

MR. EDELBAUM: I respectfully except.

MR. GOLDBERG: I submit that your Honor's unwarranted interruption of my summation and your conduct, most respectfully, in rebuking me in front of this jury without making it clear that this admonition applies as well to government counsel has severely prejudiced me, was unwarranted, and has deprived my client of a fair and impartial trial.

THE COURT: You have made your record.

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MR. GOLDBERG: May I make a motion for the withdrawal of a juror and the declaration of a mistrial based on that?

THE COURT: It is denied.

(In open court.)

THE COURT: Ladies and gentlemen, we will suspend now and resume again tomorrow morning at 9:30.

If you recall, I indicated to you heretofore that when this case was given to you for your deliberations you are going to be sequestered. Tomorrow will be the day when this case is going to be submitted for your consideration, and, accordingly, you will be sequestered, if that is required and appropriate.

Now, the alternates are also going to be sequestered. I think this is a question they had in mind, and this gives them their answer. They will be sequestered for the length and duration of these deliberations, until the jury is discharged. Is that clear?

So I suggest that you bring some appropriate necessaries for a possible stay for the night. Good day, ladies and gentlemen.

THE CLERK: Tomorrow morning at 9:30.

(Adjourned to Tuesday, January 23, 1973, at 9:30 a.m.)

1119

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

vs.

JOHN DIOGUARDI and
LOUIS OSTRER,

Defendants.

-----------------------------------x

Before:
HON. DAVID N. EDELSTEIN,
Chief Judge

71 Cr. 558

New York, January 23, 1973

10

1746-1831

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURTHOUSE
FOLEY SQUARE, N.Y. N.Y. 10007 TELEPHONE: (CORTLANDT 7-[illegible])

United States of America

v. 71 Cr. 558

John Dioguardi and
Louis Ostrer

New York, January 23, 1973
9:30 a.m.

(Trial resumed.)

- - -

(In the robing room.)

MR. MC GUIRE: Your Honor, I have a number of things to put on the record.

Should I begin?

THE COURT: No. I would like to bring one matter up, namely, Counts 13 and 28.

It would appear to me that the Court should dismiss those counts for failure of proof as against Mr. Ostrer.

MR. EDELBAUM: That was the purpose of my coming in.

THE COURT: Any objection?

MR. MC GUIRE: No objection. Those counts involve a transaction on March 6th.

THE COURT: It was before Mr. Ostrer entered the conspiracy?

MR. MC GUIRE: At least, before the proof

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shows beyond a reasonable doubt he was in the conspiracy.

MR. EDELBAUM: Do they deal with Mr. Soleno?

MR. MC GUIRE: No, those counts involve a transaction in which Fred Goodman purchased 700 shares of stock at Bruce Company on March 6th. While there is evidence which might lead to the conclusion that Ostrer was in the conspiracy at that time, the government would concede that it does not meet the standard of beyond a reasonable doubt.

THE COURT: Very well. I will hear from you now.

MR. MC GUIRE: Your Honor, we have served upon both counsel and have given to the Court a copy of the government's factual contentions as to the evidence. They are very brief in summary and they contain, as counsel will no doubt have noticed, a tabular summary of the substantive counts with references to the appropriate exhibits and they contain the suggested language that the Court used in informing the jury that they can have a tabular summary if they want to aid them in their deliberations.

MR. EDELBAUM: I would object to a tabular summary being submitted to the jury as not in evidence. I have no objection to what matter the Court may instruct the jury with respect to that, but I do object to any

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exhibit being given to the jury.

MR. MC GUIRE: It will be important for purposes of my summation, your Honor, to know whether the Court intends to instruct the jury in substance in accordance with the submission that was made.

THE COURT: It does.

MR. MC GUIRE: We have also prepared --

THE COURT: Don't let us depart from the objection raised by Mr. Edelbaum that needs some determination. Wouldn't it be sufficient in furnishing the jury with the respective contentions to indicate what is contained in your tabulation, without giving them the tabulation sheet?

MR. MC GUIRE: Well, your Honor, I don't really care in what form it is done, but I think the jury ought to be entitled to that portion of your Honor's charge. They could certainly sit in the box and have it read and re-read to them a half dozen times until they are able to have it implanted in their memory. But that would seem to me to be a pursuit in futility. There is nothing pejorative in any way about that summary; it is simply a recapitulation of neutral contentions as to what connections are to be made between the proof and the counts, and it seems to me that the Court in the exercise of its discretion could submit a summary of that kind to the jury, just as it could and as the government suggests it does, submit a written form on which the jury can indicate its verdict as to each count.

THE COURT: Don't let's waste any more time on this subject. I will make up my mind later sufficient for your purposes to know whether the contentions that you submitted will be presented to the jury in substance and generally.

MR. MC GUIRE: One other thing: We have furnished both counsel and the Court with a copy of the indictment from which have been deleted those counts and overt acts as to which there has not been sufficient evidence presented at this trial. I take it that the form is satisfactory to counsel for the purposes of submission to the jury should they request it.

MR. EDELBAUM: It is a clean copy. If the jury should request it, of course, they are entitled to it. I don't think we have any problem there.

THE COURT: Very well. Is there anything further?

MR. EDELBAUM: I have nothing further.

MR. GOLDBERG: I have nothing further.

THE COURT: All right, gentlemen.

(In open court; jury present)

THE COURT: Ladies and gentlemen, this morning we mourn the loss of Lyndon Baines Johnson, the 36th President of the United States of America. He was an outstanding person. He was an innovator in the field of civil rights, social security, education, housing and many other notable programs.

He left this nation,a lasting and enduring legacy of progress in civil rights and social programs of historical importance. His loss is much too great to be measured by time or by tears. The nation and, indeed, the world will miss him. Let us observe a moment of silence in memory of this noble person.

(Moment of silence)

THE COURT: Are you ready to proceed, Mr. Edelbaum?

MR. EDELBAUM: Yes.

May it please his Honor, the Court, Mr. McGuire, Mr. Schaffer, Mr. Goldberg, Mr. Panzer, Mr. Foreman and ladies and gentlemen of this jury:

It now becomes my privilege to talk to you for the last time in this case. Before I commence I would first like to thank the distinguished gentleman who is the chief judge of our court to the consideration to counsel with their personal problems during this trial and to apologize on behalf of counsel if it has inconvenienced you in any way in your duties as jurors in this case.

I want to thank each one of you on behalf of myself and my client for the careful attention you have paid to this case, because it is an important case, important to the government, important to the defendants.

You know, I know of no greater civic duty that any citizen of ours in this great country can perform than to sit as a juror in judgment of his fellow man. You see, this court, as it is constituted, is made up of two parts. One part is presided over by the chief judge of this court, who is presided over by the chief judge of this court, who is the judge of the law, and on the law he is absolutely supreme in this courtroom. Whatever his instructions are to you as to what the law is that applies to this case is supreme. You have no alternative; you must accept the law from the judge and apply it to the facts.

The other part of t[illegible]rt are you 12 jurors who will ultimately make a judgment in this case. Each one of you sitting in your chair in the jury box is an individual judge of the facts. On the facts and on the credibility of the witnsses you, each one of you, are absolutely supreme, and we are entitled to the individual judgment of each juror sitting in this box.

Now, before I talk about the facts in this case let me tell you this: Whatever I tell you is my version of the facts, whatever Mr. Goldberg told you, whatever Mr. McGuire may tell you, and even whatever the Court may tell you on the facts, you are not bound to accept. You can reject it. On the other hand, if any argument that counsel may make is reasonable, is in accordance with your memory of the facts you have an absolute right to consider those arguments, consider those facts and make your judgment in this case.

Now, you are not here to decide whether Mr. Edelbaum or Mr. McGuire or Mr. Schaffer is going to win or lose a case. You are not to decide this case on personalities because Mr. Schaffer or Mr. McGuire appear to be very personable young men and because I may appear to be a fat, ugly old man who has probably practiced law in this state, in this courthouse for more years than either Mr. Schaffer or Mr. McGuire have spent on this earth.

You see, one of the greatest justices of our Supreme Court once said the government never loses a case, the government always wins where justice is done.

7

Mr. McGuire, representing the government puts on the witness stand the witnesses he has. It is your duty to decide whether those witnesses prove the guilt or my client, Louis Ostrer, beyond a reasonable doubt.

Now, Mr. Goldberg told you in his opening that it's your duty to decide the guilt or innocence of each of the defendants at the bar separately. It isjust as if separate trials were going on in this courtroom at the same time. And you must decide this case on the evidence as to each defendant separately and render separate verdicts as to the guilt or innocence of the defendants.

You have been told by his Honor that the indictment, a copy of which I hold in my hand, is no evidence in this case. It is merely the means of bringing a defendant into a courtroom and charging him with a crime. It is like a complaint in a civil case. And when the defendant pleads not guilty, it then becomes the burden of the prosecution, represented by Mr. Schaffer, to tear away the presumption of innocence which right now surrounds my cleint as he sits in his chair under our law. And that presumption of innocence will remain around him throughout the rest of this day's proceeding, during Mr. McGuire's summation, during his Honor's instructions on the law to you, and even follow you into your jury room, and the only time that that presumption of innocence will fall away from the defendant is if each one of you individually are satisfied beyond a reasonable doubt, as will be defined by his Honor to you in his instructions on the law, that the government has proved the guilt of my client beyond a reasonable doubt to your satisfaction. If thta time ever comes and you find the presumption of innocence has not been overcome by the government, you must, on your oath as a juror, return a verdict of not guilty.

Now, let's put something away right from the start. I am not charging the government with framing Louis Ostrer, and don't be don't be fooled if Mr. McCuire in his summation should say to you, "If you find that the government has framed these defendants let them go."

What I say is that the government has been imposed upon in this case by one of the greatest con men that ever came into this courthouse, Michael Hellerman.

You know, I never thought I would live to see the day that in an American courtroom it would be revealed that a responsible government official entered into a written agreement with the type of man that

Hellerman is under the conditions revealed to you by the evidence in this case.

Just imagine, just imagine if when Mr. Jones or Mr. Wynn took the witness stand the government discovered or revealed through cross-examination that the defendant or his counsel had bribed Jones or Wynn to come in here as witnesses. How much attention would you pay to such a witness? How much consideration would you give to such a witness? Ask yourselves. Is there a difference? Hasn't Hellerman in effect been bribed under certain conditions, certain promises that he made?

MR. MC GUIRE: Excuse me, your Honor. I must object to this. The agreement between Hellerman and the government is not in evidence in this case.

THE COURT: The objection is sustained. Strike it.

MR. EDELBAUM: You heard the evidence. You make the determination what happened in this courthouse. You heard what was said. You heard what was brought out. You heard that Mr. Hellerman, on redirect by the government, said he wouldn't be prosecuted in themany cases he was involved in if -- if -- he didn't commit any crimes again. You heard that. And that was done in writing after he had broken allpromises to Mr. Morvillo before that.

What is this case about? The government told you in its opening there were five principals in this case: Hellerman, Goodman, Solgano, Dioguardi and Louis Ostrer. What about Schoengold? Has Mr. McGuire substituted somebody for Schoengold?

You know, an opening is not evidence. You will be told that by his Honor. It is a sort of a promise by the government and by defense as to what they expect to prove in this case, at the outset of this case, to sketch for you in broad outlines what this case is about.

You will remember that the government said they were going to prove that Ostrer was a partner of Hellerman. Listening to the evidence in this case, I am going to show you by chapter and verse out of Hellerman's own mouth, out of the mouths of other witnesses in this case that what I told you in my opening has been.proved beyond peradventure of doubt.

And remember, the defense does not have to bring a single witness into a courtroom. does not have to prove anything. That is the law.

What did I tell you? I told you that we are going to show you that Hellerman made himself out as a big operator, Cadillac car, chauffeur, impressed on Mr. Ostrer that he and his mother had large money deposits at the Israel Bank. And I will come back to that. And I told you in my opening that Hellerman set up my client, had him buy some 8,500 shares which at 15 is somewhere in the neighborhood of 120 odd thousand dollars. Did he set him up? That is the evidence right from the mouth of Mr. Hellerman.

You know, Congress in its wisdom passed what was known as the Jencks Act. The Jencks Act, as you have learned during this trial, compels the government at the end of the testimony of a witness offered by the government to submit to defense counsel any prior statements, any testimony on other occasions concerning his direct testimony, any notes of statements made by the witnesses to Mr. Mc Guire. That had to be given to counsel under our law. And Mr. Mc Guire gave us everything he had concerning the witnesses. So counsel were not geniuses when they knew about the prior testimony; they learned that according to law.

The first witness in this case was Fred Goodman. He told you how this scheme to defraud the public was concocted by himself, Soldano, Ostrer -- excuse me -- Soldano, Hellerman, Schoengold and Murray Taylor was in there in the beginning, and how they were going to bring a worthless stock up from $5 -- and it wasn't $5. You couldn't sell that stock at $5, unless, as Mr. Mc Guire told you in his opening, you took one orange and sold it to him for six cents, took another orange and sold it to him for seven cents, and you jiggled the stock up. There was no market for Belmont. But they agreed, these people, who all, every one of them got a consideration from the government by their pleas. One got a kiss-off, Schoengold, a suspended sentence. Mr. Hellerman, who corrupted public officials, the very basis of our jurisprudence, bribed, gave money to bribe judges, gave money to bribe police officers, State Liquor Authority people, and for that the government arranges for him to plead guilty, and he only gets two years, and with good behavior in prison, regardless of whether he could be paroled earlier under the type of sentence that he got, he could return to the community in 18 months for all of that, the architect of this whole case. Doesn't it make your stomach turn as you sit in the jury box, that you have seen this in an American courtroom?

Fred Goodman. Goodman arranged that Hellerman was going to get $5 for every share he set up any person to buy at $15. He made $5 right away. A partner of Ostrer? Is there any proof that Ostrer got a penny of that? $135,000 on that end alone.

Do you remember Goodman's testimony that he never saw Mr. Ostrer until the day Mr. Ostrer came into the courtroom to plead not guilty to this charge, never spoke to him. Isn't that strange if he was a partner of Hellerman?

Then we had Mr. Hellerman. Is there any doubt in your mind that he was the undisclosed owner of Kelsey, J.H. Kelsey & Company? Mr. Ostrer? Did he have any part of that? Did he have any interest in Kelsey? What was Kelsey?

When you were accepted as jurors in this case I know you didn't leave your common sense behind in your home; you brought it right into this jury box and you have shown that by your attention in this case. Do you believe Schoengold when he said he didn't know that Hellerman was the owner of Kelsey when he and Hellerman jiggled the price of the Imperial stock fraud? What was Kelsey? Did they have any other business than defrauding the public in Tabby's, in Imperial, in Belmont, in other stock frauds? You heard Mr. Schoengold admit that practically the only business of Kelsey was to engage in these fraudulent stock schemes.

Now, how did he set Mr. Ostrer up? Isn't it obvious what he did? The first thing, he sought his assistance in getting a million dollar life insurance. You heard the premium, some $15,000 a year. Don't you think that would have impressed Mr. Ostrer as to the substance of Mr. Hellerman? How many people do you know in your lifetime got a million dollars life insurance, applied for a million dollars life insurance?

I told you I would prove to you besides that that he took him to the Israel Bank, introduced him to officers there.

While I am on this subject, do you remember Sc' engold telling you how he and Mr. Hellerman checked at the Israel Bank to see what kind of a man Mr. Ostrer was? And doesn't it not jibe? Hellerman admitting that he, Hellerman, took the defendant to the Israel Bank to impress him with his worth? What did Ostrer have to do with the Israel Bank? I will come to that later.

11 am And didn't he spar with me.

You know, Hellerman was not an uneducated man. He had a college degree in economics, majored in accounting; he was cunning. You saw him on the witness stand. He was cunning. And he knew when I asked him about the Israel Discount Bank what I was driving at, what bank I meant.

MR. MC GUIRE: Objection, your Honor.

THE COURT: Sustained.

MR. EDELBAUM: Don't you have a right to determine, you as finders of the facts, that Mr. Hellerman knew I meant the Israel Bank? And by him saying no to the Israel Discount Bank, he hoped to throw me off the path. Is that the type of witness you can believe? But when I pinned him down to the right bank, he admitted that he introduced Mr. Ostrer to the officers there, he admitted that he told him of his large deposits with his mother that he controlled.

mmbr 6

Ask yourselves this. Do you remember Hellerman testifying that the first time he and Mr. Ostrer discussed Belmont was at the time he was at his home discussing the life insurance or at the doctor? Don't you remember he said to him, "There is going to be a deal in Belmont Franchising stock and it's at $5. Don't buy it at $5. Wait until it's $15. Wait until it is $15."

How unreasonable is that when somebody gives you a tip on a stock to have a person say, "Dont' buy it at $5; I am going to want you to wait until it's $15," then you will pay $15 for it.

You remember him testifying that he told Ostrer that he didn't know how many shares he could get for him, and that he, Hellerman, would guarantee any losses. Ask yourselves this: What kind of a partner would that be? I would be your partner and you as my partner would be the only one to sustain a loss, the only one to sustain a loss. What kind of a partner is that? Ask yourselves that.

Now, he told you that he arranged a 500 share order for him with Alger Securities. Who was a customer of Alger Securities? Mr. Ostrer or Mr. Hellerman? That nice young lady who took the witness stand identified the purchase order. She told you that Ostrer had been a customer of Alger. Why would Hellerman arrange for a 500 share order?

Let me ask you this: If Kelsey, if you are satisfied from the evidence that Kelsey was a brokerage house only for the purpose of fraudulent deals, if you find from the evidence that Hellerman was the undisclosed owner and, in effect, Schoengol 's boss, why would Schoengold go up to Ostrer's office to check up on what kind of man Ostrer was, if he was able to pay, if the boss knows you, "Buy 5000 shares in Ostrer's name?" Are you going to go up and question your boss?

Some big man Ostrer. • He got Ostrer because of his buying power; he got Ostrer because of his financial stability, and Ostrer had trouble right away paying for the stock. But he paid it. He paid it. You heard Halpern say, "He paid me for all of the shares he bought from me."

Now, it's the little things in cross examination that give you an opportunity to judge the credibility of the witnesses in this case. And we talk about the loans that Hellerman said he got, loans from a shylock.

Hellerman said it was 60,000. Then Schoengold said it was 120,000, and he forgot, he forgot that under oath before the grand jury it was 150,000.

And you remember how my friend Mr. McGuire on redirect tried with might and main to see whether Schoengold maybe didn't remember the exact amount? Because this is a brilliant prosecutor. He saw -- he saw -- the flaw, the inconsistency right away. So he tried with his might and main -- if you have any doubt -- you can have it re-read. He tried with might and main to have him perhaps say "I am not sure it was $120,000. If I said before it was $150,000, maybe that's right."

But Schoengold was sure, he was positive it was $120,000.

How much money did Hellerman make in the Belmont deal? He admitted he made between 200 and $250,000. Any proof that his partner, as alleged by the government, got any part of that? The entire amount and his cock and bull story one time Hellerman claimed -- Hellerman claimed -- he gave Ostrer $1700 out of a quarter of a million. His partner, Ostrer claimed that -- I mean Hellerman claimed that.

Was that all he made? Right after he agreed orally, right after he agreed orally with the United States

Attorney when he claims he became cooperative and after he had promised Mr. Morvillo not to engage in any more criminal activity, he made a quarter of amillion dollars in another stock swindle.

MR. MC GUIRE: I must object to that, your Honor.

THE COURT: Objection sustained.

MR. MC GUIRE: Theer is no evidence of that.

MR. EDELBAUM: Well, pardon me.

Quoting from page 659, Mr. McGuire, talking about a stock fraud that he admitted engaging in after he had promised Mr. Morvillo.

"Q What was the nature, in broad detail, of that stock fraud involved?

"A I asked you before, sir, if you would like me to explain it. I would be glad to explain it.

"Customers people, that heard about the stock, went out and bought it from their brokers and I, being in possession of the stock, became an opportunist and jumped on the fact they were buying the stock and I sold the stock at the same time. In Computer Microdata the brokers did not get hurt up to the time the stock was subpoenaed by the SEC. Every broker was paid every dollar...

"Q How much money did you make?

"A I would say about a quarter of a million dollars.

"Q A quarter of a million dollars?

"A Yes, sir.

"Q In what year was that?

"A This year. No, last year."

1971.

And so I say to you that he made that other quarter of a million dollars. $500,000 he admits. How much is he to pay in restitution in accordance with the agreement with the government: $100,000 when he can. How much did he pay? $12,500. What a deal, what a great deal.

What did Mr. Hellerman say on cross-examination with respect to this written agreement? "The United States Attorneys office."

Page 687, Mr. McGuire.

"The United States Attorneys office you have no expectation is going to prosecute you or take any action against you whatsoever?

"A You know that is the agreement.

"Q That is the agreement?

"A You have a written copy of the agreement. I signed an agreement."

Here is your whole case, ladies and gentlemen, right out of the mouth of Hellerman to show that my client was not a conspirator in this nefarious scheme, that he was set up and he was a victim just like everybody -- other people victimized by this cunning crook.

Page 791. Before I get to that, question on 790:

"Q Did you take him to the First Israel Bank & Trust Company at any time and introduce him to any officers when you first met Mr. Ostrer? Yes or no?"

And an old, cunning witness who knows what I am driving at, who you can find knew what I was driving at, tried to wiggle out so he gave meone of those Hellerman explanations. I didn't want Hellerman's explanations, I wanted to get to the truth. And he says to me: "I can't answer that question yes or no, sir. I would be glad to explain it if you would like me to.

"Q If you can't answer it, just tell me and I will try to rephrase the question.

"A. Plesae.

"Q Did you take him over to an officer of the First Israel Bank and Trust Company and say, 'This is Mr. Ostrer?' Yes or no?

"A Yes.

"Q Did your mother and you have substantial deposits, certificates of deposit, in the First Israel Bank & Trust Company? Yes r no?

"A Yes.

"Q Which you controll ? Yes or no?

"A Yes.

"Q Did you tell that to Mr. Ostrer? Yes or no?"

And then he squirmed. And then the usual answer of a liar who is caught in his own trap. What is his answer?

"I don't remember."

"Q What?

"A I don't remember."

And before I read this question, you have a right to find that Hellerman didn't know what papers I had, what statements I had, prior statements, of his.. He couldn't remember everything. So he didn't dare lie outright. Maybe he told it to Mr. McGuire, the United States Attorney, maybe it was in that note I had that I was holding in my hand. So what does he say?

"Q You would not deny under oath that you told him that, is that right?

"A Possibly I told him. I don't remember.

"Q Isn't it a fact that that was part of a scheme on your part to impress him with how substantial you were, yes or no?

"A I can't answer that question yes or no, Mr. Edelbaum.

"Q Did you intend to impress him with your substantial worth, money worth, yes or no?

"A I still can't answer that yes or no.

"Q Now, were you endeavoring to have him buy some stock of Belmont?

"A Yes."

And then I said to him: "As a matter of fact, in this interview with Mr.McGuire on December 13, 1972, and December 29, 1972, did you tell Mr. McGuire in that interview that you set up Mr. Ostrer to buy stock?

"A Yes.

"Q And you did that, Mr. Hellerman, jsut as you did other people you knew, right?

"A Yes, sir."

Now, you are sitting in that box and you are listening to this man. Did you ask yourselves, why was it necessary to set him up? Now, we know what setup means. It means to sell somebodysomething which isn't so, to impress him for the purpose of having this man do what you want him to in the purchase of stock. If he was your partner in a fraudulent scheme to jiggle the stock up, to fool the public, why in God's name was it necessary to set him up?

Then I said to him:

"Q That's what I'm talking about, because you are agreeing to have the government jiggle the stock up to $15?

"A Correct.

"Q Then you would make $5 a share for all the people you got to buy at $15?

"A Right.

"Q Right?

"A Right.

"Q And Mr. Ostrer was one ofthose people that you were going to make the $5 a share on, right?

"A Correct."

He was going to make $5a share on his partner, on the one that he was going to engage in a nefarious scheme to defraud the public? Doesn't that give you a reasonable doubt right there from all the evidence in the case and this testimony by Hellerman without anything else? Doesn't that give you a reasonable doubt? And you will be told by his Honor, if you have a reasonable doubt about the guilt of my client you must bring in a verdict of not guilty in this case.

And then I said to him:

"Did you take somewhere between 200 and $250,000 out of Belmont? Yes or no?

"A Yes."

Do you remember I said to him:

"Q Did you ever say to anyone, referring to Mr. Ostrer, 'He's in this innocently, he is being prosecuted for nothing, it's all my fault?' Do you remember saying that?

"A Something similar to that, yes.

"Q Was that true?

"A No, sir."

Ladies and gentlemen, you heard Mr. Jones, you heard Mr. Wynn. You heard the circumstances of what was said. You heard what Mr. Hellerman said on those three occasions. You heard his explanation as to the reason he made a statement of that nature, that he didn't want to "blow his cover."

Tell me, as the defense witnesses for Mr. Ostrer took the stand, did you compare them with the testimony of Coodman, Hellerman, Schoengold? Ask yourselves that. You know how that testimony shone out? It came through all the mud of these scoundrels who testified in this case, and it shone like a beacon light shining on a foggy sea. Is there a single doubt in your mind that Mr. Jones and Mr. Wynn didn't tell the absolute truth?

With respect to Mr. Wynn's testimony, you heard Mr. Wynn say that on that second occasion outside of Chief Judge Edelstein's courtroom on the 11th of June Mr. Edwards, Thomas Edwards, who then was acting as an attorney from the office that represented him, the Nizer office, was there. You know, there is such a thing as rebuttal. You know how easy it was for Mr. McGuire to pick up a telephone and say "Would you come right down? I would like to have you testify whether this did happen or didn't happen."

Was that one inthis case?

Your Honor, could I impose upon your Honor for a five-minute recess?

THE COURT: Five minutes.

(Recess)

(In the robing room)

THE COURT: Did you ask for a conference, Mr. Goldberg?

MR. GOLDBERG: I did. I have noticed

during the summation of Mr. Edelbaum that Mr. McGuire on numerous occasions his laughing, shaking his head, audibly on one occasion when (makes sounds) when Mr. Edelbaum was summing up. I was informed by Mr. Panzer the same thing occurred on my summation but my back was to Mr. McGuire. I do not feel this was intentional on Mr. McGuire's part because he has comported himself with utmost fairness. I just feel if it is involuntary or it is not realized, it should be stopped and whatever counsel says, even when Mr. McGuire sums up, no defense counsel should smile, shake his head, make noises that can be heard as far away as I heard Mr. McGuire's (makes sound). I don't know how you can put that on the minutes. That's what occurred. I wanted to put my statement on the record.

MR. MC GUIRE: Your Honor, if I have been doing anything like that it's completely involuntary.

MR. GOLDBERG: I believe that, your Honor.

MR. MC GUIRE: I don't have a poker face exactly. I will do my best to try and avoid any --

THE COURT: If the criticism is justified, then I certainly think you ought to subject yourself to greater restraint and impose more discipline upon yourself, because obviously you are aware that that is not desirable conduct on the part of a government representative or a defendant's representative.

MR. MC GUIRE: Of course not. I must say, though, in fairness that it seemed to me from my observation of the jury that every eye has been riveted on Mr. Edelbaum during his summation. I will certainly try and avoid any such thing.

MR. EDELBAUM: All I might say is it could very well hurt the government more than it could help the government.

THE COURT: That's always a fact. Nobody can peer into their minds.

MR. EDELBAUM: No. I am sure it was involuntary. Of course, I had no way of knowing. My back is turned to Mr. McGuire.

THE COURT: Anything that is said or done can be a double edged sword.

MR. EDELBAUM: Yes. I would suggest that to Mr. McGuire for the purpose of disciplining himself. I usually when the government sums up close my eyes and appear to be asleep. That's the best thing I can do. You will notice that, Judge. As a matter of fact, during one occasion when the people were summing up in a murder case, the prosecutor said to the jury, "Look at him. He is sleeping during my summation."

I said, "Just say something you shouldn't say and you will see what happens, and the whole jury fell apart and he lost his case.

THE COURT: All right, gentlemen.

(In open court; jury present)

MR. EDELBAUM: May I proceed, your Honor? Thank you.

Let me ask you this: Do you remember Mr. Halpern testifying, Bruce Halpern? He was one of the unfortunates in this nefarious scheme. There is no doubt he lost a lot of money. There was a young man who was on the upgo and was corrupted by Mr. Hellerman as he corrupted police officers, Judges, state liquor authority investigators. Do you remember when the $60,000 check of Hellerman -- can you imagine him persuading a bank officer to issue a bank check for $60,000 without putting a penny up of assets for the $60,000?

And who is the check made out to? It isn't made out to Bruce & Comapny. It is made out to Bruce Halpern.

You see, when Ostrer couldn't raise the money immediately, Hellrrman wanted to be sure that the stock was bought. Some partner.

So he corrupted a bank officer to do something he shouldn't do by issuing a bank check without having the money there, and then the bank officer had to stop payment on the check.

And who did Halpern look to? He looked to Mr. Hellerman. You see, you could find that Halpern was mistaken when he said that Mr. Ostrer had brought him the check, because why would he call Hellerman if Mr. Ostrer gave him the check? Because only after he couldn't get the money right away that he got in touch with Mr. Ostrer and said, "My God! The check Mr. Hellerman gave me bounced. I want the stock back."

And what did Ostrer say? "Come up and get it."

There is the receipt for the 4,000 shares. Is that a man engaged in a fraudulent scheme? Or is it somebody who is honorable and said, "I'm not trying to do anything to you; come and get your stock."

And it was only after the stock was paid for that he gave Mr. Ostrer the stock back.

Now, isn't it strange? You remember you saw these two exhibits, 51 and 52. This is the check for $60,000 made out to Bruce Halpern, 103 Park Avenue. On the back of the check it says, "In payment of 4000 Belmont Louis Oster." And then "Paid to the order of Bruce & Company, Bruce Halpern."

Then you saw the blotter, Government's Exhibit 51, which the government for its own reasons had marked for identification and didn't see fit through Halpern's testimony to put in evidence. So I put it in evidence. And you see that this blotter entry is "Louis Oster."

And the only thing about that is that that is further proof that Ostrer didn't personally deliver this check, because the proper notation, the proper spelling would have been put on there. Isn't it strange thatthe three checks that came from Jack Ostrer were payable to Bruce & Company and one not payable to Bruce Halpern.

You remember practic lly the last question I asked Mr. Halpern:

"Mr. Halpern, did there come a time after the stock fell out of bed when you said to Mr. Ostrer, 'We both have been had'?"

Isn't that true? Doesn't the evidence reveal that beyond peradventure of doubt?

You know, I was verysad in this case about seeing a brother attorney who blurted out that he knew me for 15 years, Morris Winter, being corrupted by Mr. Hellerman. Just picture what his future is now at his age. Just ask yourselves what is the future, having pleaded guilty to a felony in this court, the consequences that follow. Forget about jail -- the probabilities of what might happen to his license. He was corrupted by Hellerman. Hellerman gave him the name of Ostrer to buy a thousand shares for himself. Did he call

Mr. Ostrer and ask him if it was all right? No. He gave Ostrer's office address. He told his broker, for whom he was the attorney, to have the confirmation slips although addressed to the address of Mr. Ostrer's office, not to be sent to Ostrer, but to be sent to him. My God! If he was in the conspiracy, if he was a partner of Hellerman's, why was it kept a secret from Mr. Ostrer? Ask yourselves that.

He made $11,500 on the transaction, Mr. Winter did, and even though he said it was in payment of services, he put it in his son-in-law's name. Ask yourselves why he di that? You know why he did that. He didn't want to pay the income tax, because the income tax in the son-in-law's name, who was a student, would be that much less than he as a practicing, active attorney in this city.

Let me ask you, can you believe Winter? He heard about the architect getting a deal from the government, so he wanted a little piece of the deal. So he approached -- it is his testimony right in the record -- the government.

"Q When did you first have any discussion with any government agent about your being a witness and cooperating with the government? Tell me when was the first discussion.

t5/2 am

"A I would say rather recently, within the last -- well, I would say possibly the day or a week before --

"Q I just want the date.

"A I am trying to recall.

"Q What?

"A It was prior to the time that the --

"Q No, please. All I want is the date. I don't want it prior to the time of anything. You fix it in your mind and tell me the date.

"A Probably it was in November of 1972."

This trial started January 4, 1973. So it was only within two months before the trial that Winter came up with the story that he told about sitting in an office and hearing certain things.

Did the government ask him to be a witness?

"Did you approach the government or did the government approach you?

"A I believe that I approached the government."

And when did he see Hellerman? Remember, remember this. He was very close to Hellerman. He was his lawyer. And this indictment, as you know from the evidence, came down June 1, 1971. He never told anybody from the government about this so-called meeting he was at until November, 1972. And what is significant aboutthat? I will tell you what is significant about that. I asked him, "Prior to that date when was the last time you saw Mr. Hellerman?" Referring to November, 1972, when he came to the government to be a witness.

"A It must have been the end of September.

"Q September --

"A -- of '72."

What was significant about the end of September, 1972? That was the time when this nefarious written agreement was entered into between the government and Hellerman. So Mr. Winter wanted to save himself. What did he do? He came forward after talking to Hellerman.

Let's get one thing straight: I am not charging this young man here with suggesting any testimony to any witness. He only puts on the witnesses he got. Can you believe Winter when he finally admitted he had lied before the Securities and Exchange Commission? Here he told you that Hellerman had told him when he was told to go and buy the thousand shares of stock:

"Q Now, you told us, did you not, on direct examinatio
that on the day that Mr. Hellerman told you to buy the stock he was going to move the stock up, is that right, yes or no?

"A . Yes.

"Q He didn't tell you he felt the stock was going to move up, did he?

"A No."

Then I confronted him with his testimony before the Securities and Exchange Commission under oath, and he is a lawyer who should know what it means to lie under oath before a government agency, to government agents, and these questions were read to him, questions and answers that were given by him before the Securities and Exchange Commission:

"Q From whom did you firsthear of Belmont Franchising Corporation?

"A From Mr. Hellerman, Michael Hellerman.

"Q What did Mr. Hellerman tell you about Belmont Franchising initially?

"A He recommended that I buy the stock.

"Q Did he give you any reason why you should buy the stock?

"A He said that he felt the stock was going to move up."

It is a lot different from saying, as he said here, that Hellerman told him he was going to move the stock up.

And I said, "Were you asked those questions, sir, and did you make those answers under oath before the Securities and Exchange Commission?

"A Yes."

5/3 am

Then not only did he use the name of Mr. Ostrer without his knowledge, but he breached the ethics of an attorney by giving a client of his to sell stock belonging to Hellerman. Is there any other reason why a nominee like him should be gotten to sell stock belonging to Hellerman other than to defraud the government of its just due on income taxes? And he paid that man, I believe the testimony will show, a few hundred dollars. They didn't trust him; they went over to Jersey with a guard to be there when he cashed his check, and they copped the dough right there and gave him his few hundred dollars. This was some 28 or $30,000 or $36,000.

That was the time when this thief Hellerman was also so unethical as to steal from his partner Soldano $6,000. He couldn't be trusted, one crook to another. The government wants you to be convinced beyond a reasonable doubt on testimony so polluted as appears from witnesses like that who appear in this courtroom.

Reasonable doubt? Reasonable doubt? Hellerman, he even tried to cheat Winter out of his profits. He went up to get his money. They gave him $2700. And then he chase Mike Hellerman till he got his money. But Mike took the dough first.

You know about this transaction of Eastman, Dillon that Mr. Ostrer bought, his sisters bought 2000 shares. There was a loss there. Did he pay the loss? The loss was $500, and I believe Mr. Goldfarb testified that half was paid. But he says it was all part of one deal of other transactions that he had. He was a customer of Eatman, Dillon. And there was loss of $12,000. And what happened? Was he the kind of a person like Hellerman who didn't live up to his obligations? You heard Goldfarb testify that Mr. Ostrer paid them $700 a week or a month to pay that $12,000 loss. Is that the type of person that would be engaged in a conspiracy of this kind?

The government wants you to conclude that because one or more of these witnesses have told you that Kilroy worked in Mr. Ostrer's office that, therefore, you must conclude that the sale of stock by Kilroy was Mr. Ostrer's. Take the checks. Take the checks in evidence here. You tell me. Look at them. Whom were they payable to? They are payable to Kilroy. Whom are they endorsed by? Take a look. Does Ostrer's name appear in any way?

And when some new stock, because some of the stock was not in proper condition was turned in, who wrote to the Connecticut National Bank, where the stock was registered, for new stock? Was it Ostrer or was it Kilroy? And look at this exhibit, takeit, ask for it in your jury room, 102.

Remember that, 102 in evidence. Is it a letter on the stationery of Ostrer? No. William J. Kilroy, consultant, 385 Fifth Avenue, New York City. Is that Ostrer's address? You have Ostrer's address on these slips. You will find those slips that Mr. Winter had. 377 Fifth Avenue. And what does it say?

"April 30, Connecticut National Bank, Bridgeport, Connecticut:

"Gentlemen:

"Please find the following certificates for Belmont Franchising Corporation -- and it lists the numbers of the certificates. Please use this letter as your authorization to transfer these shares into the name of Barad-Shaff Securities Corp. Your cooperation is greatly appreciated.

"Very truly yours,

"William J. Kilroy."

Don't you have a right to conclude that the government verified that this was Kilroy's signature?

Finally, we have Mr. Schoengold. You know, if you find that any witness in this case deliberatdy and intentionally testified falsely about any material fact in this case, you have the right to throw out his entire testimony, or you have the right to accept any portion of his testimony that you believe. And I urge you in deciding this case to keep that right in your mind, because I tell you right now if you don't believe Hellerman, you have a right to throw out his entire testimony. And if you throw out his entire testimony, there is not only reasonable doubt about my client's guilt, but a thousand doubts.

I will show you certain things about Schoengold's testimony. He testified falsely in this case. Do you believe him when he said that he didn't know Hellerman controlled Kelsey until the midst of Belmont? Ask yourselves, why would he go and check out Mr. Ostrer at the Israel Bank before he bought a share? Why the Israel Bank?

I got this from Mr. Mc Guire upon my request, which he immediately turned over to me, Government's Exhibit 40. It was marked 40 for identification. Take it in your jury room. Mr. Mc Guire for reasons best known to himself didn't introduce this in evidence, because if an exhibit is marked for identification you have no right to see it until it is in evidence. I marked it in evidence.

Do you know why I marked it in evidence? You remember me asking Schoengold did he have an account at the Franklin National Bank, and he says, "I don't know." This came from the files of J.M. Kelsey & Company. Here is numbr 5

a new account application. You know, when you open an account in a brokerage firm the government requires, the regulations require that your Social Security number is on the account. That is so the government should know if you have any profits on stock the computer will notice it. They will be notified and if you don't report it, the government knows about it. So here is an account form and here is a conspirator, they claim, Mr. Hellerman's partner, he fills out or he gives the information, and there is your Social Security number which his right home address, with his right business address, where he is employed, type of business, phone number at home, phone number, bank records.

/5 am Naturally, when you go a brokerage house -- I don't know how many people on this jury have ever traded in stocks -- but when you open an account the broker wants references, because if you order some stock on the telephone and they buy it for you they are stuck ifyou don't pay for it. So they ask for a bank reference. What bank reference is given here? Franklin National Bank, regular checking account of Mr. Ostrer. Tell me, if there was no account at the Franklin National Bank how long would you think it would take the government to have somebody from the Franklin National Bank here and say they examine the records of the Franklin National Bank in 1970 and Ostrer had no account.

Or they would say they went to the Israel Bank. And don't you think by the same token if he had an account there with all these exhibits, a hundred exhibits -- and Mr. Mc Guire is going to cry the corroboration is in the slips -- corroboration about what -- don't you think they could have somebody from the Israel Bank here in a minute to prove that he had an account there if there was an account? Why the Israel Bank?

Mr. Schoengold told you about some officer that he claimed knew Ostrer from another bank, and that he asked him and he said Ostrer was all right. I asked him, "Did you see anybody else at the bank?"

"Oh, no, no, no."

But, you see, I don't ask questions unless I know where I'm going. And I knew he had testified under oath before in the grand jury or the Securities and Exchange Commission and said that he consulted with the manager of Israel Bank who said he would not loan a penny on the Belmont stock, and that he didn't like the smell of it, or of Ostrer. Let me see about Schoengold. You see, when a liar sits on the stand and he is cross examined, little things creep out. That is the art of cross examination. That is where the truth comes out. And I said to him, page 1582:

"Q Hellerman told you where to go for the stock, didn't he?

"A Yes, he did.

"Q And that Soldano and Goodman had control at that time of some 28,000 shares?

"A That is correct.

"Q They were bringing it from 5 to 15? Is that correct?

"A That is correct.

"Q And to your knowledge every share of stock that was purchased at 15 by the different people that you have told us about up to this time, Mr. Hellerman got $5 for each share approximately? Right?

"A Not only Mr. Hellerman.

"Q That was his agreement, he was to get it, wasn't he?

"A That is correct.

"Q Did Hellerman tell you, yes or no, that he had guaranteed Mr. Ostrer against loss?

"A Yes.

"Q And he was going to get half of the profits? Right?

"A That is correct.

"Q For the guarantee against loss?

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"A The same deal.

"Q When you say the same deal, the same deal as the other customers? Isn't that right?

"A That is correct."

Now, ask yourselves, if two criminals enter into an agreement to engage in a conspiracy to defraud the public, why in God's name would one of them guarantee his partner against loss? Wouldn't his partner have to have the same risk?

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Now, remember there always has to be a reason, where the witness is confronted with the fact, that he committed perjury. A witness commits perjury before the SEC, what are you going to believe? Tell me this. You are judges of the fact. How do you determine when to believe somebody? He committed perjury before, here he tells the truth? How do you know? How can you be convinced beyond a reasonable doubt? He admits he deliberately and intentionally lied under oath before the SEC. It wasn't inadvertent. It was deliberate.

Now Mr. McGuire, the astute, experienced prosecutor that he is, he knew that he ought to have an explanation from the witness why he lied. And what is his explanation? And the very explanation exonerates Mr. Ostrer. Let me show you why.

"Did you have a reason, Mr. Schoengold" -- this is Mr. McGuire on redirect examination after Mr. Schoengold was cross-examined by counsel -- "Did you have a reason, Mr. Schoengold, for lying when you appeared before the SEC in June of 1970?

"A Yes.

"Q Can you tell us what the reason was?

"A I was trying to naturally protect myself and implicate myself as little as possible and trying as hard

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as I could not to name any of the people" -- listento this -- "that I knew to be involved in this case. I didnot want to be the one that pointed the finger since I had been amongst the first people called to the SEC, and if the thing was to blow up immediately the finger would be pointed at me right away that I was the one that was talking.

Now, read that and examine it. He didn't want to name the people that were involved, but he named Ostrer, he told Ostrer was the reason he recommended the stock to his people. If Ostrer was involved in Schoengold's mind, if that answer is true, why did he name Ostrer?

Now, something happened on redirect which is very puzzling to you. I want you to weigh it. You know, redirect is permitted by law so as to endeavor on the part of the person offering the witness to have the witness rehabilitate himself in some way in the jury's eyes after being cross-examined by the lawyers for the defense.

I will be through in about five minutes, ladies and gentlemen. I just want to tell you this. Page 1606. Listen to the question:

"Q Prior to your appearance" -- by Mr. McGuire --

"Q Prior to your appearance before the SEC in November of 1970" -- remember, that was the second time that he appeared and allegedly was cooperating fully with the government -- "and prior to your appearance before the grand jury in this case" -- the grand jurywas in March of '71 -- "did Mr. Hellerman tell you the lie?"

And I think Mr. McGuire got an answer that he didn't expect.

"A Yes."

Yes, Hellerman told him to lie.

Don't you have a right -- that slipped out -- don't you have a right to conclude that it was Hellerman who got Schoengold to lie in this case and Schoengold got what he expected, what he hoped to get. He got a suspended sentence for everything he did in this case.

Now, I don't want to go any more into the defense witnesses. You heard them. You judge whether they are telling teh truth. You weigh that testimony and tell yourselves if everything in this case doesn't give you a reasonable doubt about the guilt of my client. By your verdict you can tell the world that you, as American jurors, sitting in an American courtroom, require better testimony to convict a human being in this courthouse than offered by the government where a written agreement was made of the type that has been testified to. My God, I don't think an American jury --

MR. MC GUIRE: If I may, your HOnor --

THE COURT: Object on sustained.

MR. MC GUIRE: The agreement is not in evidence.

MR. EDELBAUM: I don't think an American jury would convict a mongrel dog on the evidence in this case no less a human being, and I ask you on your oath as jurors to consider the case against my client, and when you do that I am satisfied that you will by your verdict return to this courtroom and say through your foreman that you find the defendant I represent not guilty.

Thank you for your patience in listening to me.

THE COURT: Ladies and gentlemen, do you wish to take a brief recess before Mr. McGuire begins his summation? Would you like that?

THE JURY: Yes.

THE CLERK: The Court will take a recess. Remain seated until the jury leaves the room.

(Recess)

THE COURT: Mr. McGuire, you may proceed.

MR. MC GUIRE: May it please the Court, honorable defense lawyers, Mr. Foreman, ladies and gentlemen of thejury: It has been kind of a long road. We have all been together in this courtroom for the better part of three weeks now and nobody would blame you if you felt sick to death and tired of the whole thing. But I am sure you feel that along with voting your obligation as jurors are the most important obligations of citizenship in these United States and I know by your careful attention to the evidence in this case, in spite of many delays that were necessary but that may have been irritating to you, you have attempted to keep your eyes on the evidence, keep your eyes on your mind's working. And I would ask you to bear with me for an hour or a little more while I attempt to put the government's case in perspective as we see the evidence.

I am sure you have noticed that every effort has been made here by Chief Judge Edelstein to see to it that these defendants have had a fair trial. I hope you will find it's been a fair trial.

The structure of it,of course, has been a little unusual. The government has been in the position of presenting the evidence and the defense has been a concerted attack beginning from the very first opening statement and ending at the end of four hours of defense summation on the government's witnesses.

Now, this has been a tooth and nail attack. No stone has been left unturned to cross-examine these witnesses to get and to tell you in as many words as the art of advocacy will allow that terrible, terrible people they have been and what terrible people they are in an effort to convince you -- and this is all perfectly proper -- in an effort to convince you that you shouldn't take these witnesses'word for anything.

The question here, ladies and gentlemen, however, is not whether you buy a share of stock from a Michael Hellerman, it is not whether you guy a used car from Steven Schoengold. The question that faces you is whether in the very peculiar context and circumstances of this case these witnesses and documents that are in evidence form a believable picture of a vicious, corrupt, unwholesome, fraudulent stock scheme. And it's the government's contantion that the evidence has shown that these defendants, Dioguardi and Ostrer, although their names appear on very few pieces of paper, whether in that fraudul nt stock scheme up to their eyeballs. Furthermore, you can find that the evidence is overwhelming in that regard.

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Maybe an analogy would help as to the role these defendants, an example. I have had the though during the trial that you might compare this scheme to fixed sports event, a basketball game where Michael Hellerman, whom you can find is one of the rottenest creatures you have ever run across, is the center man, a that unholy crew of Goodman, Soldano, Ostrer and DiLoren are the regular players, the regulars on the first team and the likes of Schoengold, Halpern, Winter and various brokers that have been referred to throughout the testimo are, in a sense, the second team. They are replaceable. One broker for purposes of this manipulation was pretty much like another. You know that I have left out the name of John Dioguardi.

Mr. Goldberg told you on his opening statement that we'd been dragging in Johnny Dio's name by the coat-tails and insinuating to you in summation that there was some effort being made by the government to prejudice you against him. We rest on the evidence as to Johnny Dioguardi, and I would suggest to you that you can find from the evidence that he was in the position of the referee in this crooked basketball game, a crooked referee at that, because it was his role to get 25 per cent of the center's salary.

His role was to have a piece, if you will, of the action, a piece of everything that Michael Hellerman did.

Now, if you are in the habit of trying to say who's worse, Hellerman or somebody whom the evidence showed had 25 per cent of Hellerman, then I say you have a difficult question. But, ladies and gentlemen, fortunately, you are in the position of doing no such thing. Your job in this trial is a difficult one and a demanding one, but it does not require that you assess variable blame for this rotten scheme among the participants. Your job is not to say whether Dioguardi is worse than Hellerman or vice versa or Ostrer is worse than any of them. Your job is to look at the evidence and from the evidence, or as his Honor will tell you, if it seems that way to you, from the lack of evidence to decide whether Dioguardi and Ostrer were criminally involved in the conspiratorial scheme which the indictment charges in this case. That's all.

Your job is not to speculate on whether the government has been good or bad in connection with the prosecution of this case, and, as I suspect you realize, there is part of that story that you haven't heard because, just for example, the written agreement between Michael

Hellerman and the government, for perfectly good legal reasons, is not in evidence before you.

But, ladies and gentlemen, if the defense lawyers come before you and say that even though you think these people were involved in this scheme criminally and up to their ears if they come to you and say that even though you think that the government has been so terrible in making deals, which we have heard about until the rafters ring, that you ought to acquit these defendants in spite of the conviction that they are guilty and let them walk out of a scheme in which you are convinced of their guilt, then, ladies and gentlemen, I suggest that you tell that to the judge.

MR. GOLDBERG: Your Honor, I object to that remark and I ask it be stricken. They don't have to tell anything to anybody when they vote.

THE COURT: Objection sustained.

MR. GOLDBERG: May the jury be instructed to disregard that remark?

THE COURT: Disregard it.

MR. MC GUIRE: Ladies and gentlemen, as in any common enterprise, as in any sports team or anything else, the government's contention about this case is that the defendants in the inner circle were all dependent upon each other, the defendants who pleaded guilty, Coodman, Hellerman, the defendants who are on trial here before you, Dioguardi, Ostrer, Soldano, who is not on trial here before you and as to whom you don't know anything,and DiLorenzo, who is in the inner circle but, as you will see, is not named as a defendant inthis indictment for reasons again that concern you not.

Our contention is these people were linked together and dependent on each other. And there isn't any question, no question in the world, that the guy who made the scheme run, who had the ideas, who was the playmate for the whole operation was Hellerman, and whether or not Hellerman is a rotten character you must examine his testimony and in spite of the fact that he admitted -- the scum, if you want to regard him as that -- on the stand admitted something like 20 felonies, you are to decide whether that man is capable under the circumstances of this trial of telling the truth to you and if you believe that he told the truth to you and if you believe that he was supported by truthful testimony of other people, no matter how bad, the Schoengolds, the Halperns, the Winters, you name them, and if you believe that beyond a reasonable doubt, ladies and gentlemen, your duty is very clear.

Now, this is a very curious basketball game, to go back to the analogy once more, because the players in this game, the inner circle, for the most part doesn't have their names written across their shirts. They are not out in front of the crowd dribbling or passing or whatever basketball players do so that all the world can watch. Dioguardi's name doesn't appear on a single one of the sixty-odd exhibits that the government has put into evidence in this trial , not one,and although Ostrer's name appears on a good many of those, his signature appears on only a few. His signature appears as the signature of an endorser on three checks from a man named -- written by a man named William Falner. Here they are, ladies and gentlemen, Government's Exhibit 29, and you remember from the testimony that these three checks for $17,500 each were given by Ostrer to Mr. Steven Schoengold at Kelsey & Company for the purpose of paying for 3500 shares of stock at $15 a share.

One of the other places where Ostrer's signature appears is on the back of some other checks, two checks totalling some $18,000-odd as to which, for a reason that you heard explained from the witness stand Ostrer didn't receive the money.

Now, in judging whether a man is a participant in a criminal conspiracy, in anunderground, undercover, secret, disguised set of transactions, we suggest to you that it is constructive to look at the way in which the man conducts his business.

In paying for stock which it is conceded was ordered in Ostrer's name, 14,000 shares, one half of the total outstanding publicly tradeable Belmont stock, one half, ladies and gentlemen, do you find a single check with Ostrer's name on it?

Ordinary people, ladies and gentlemen, I suggest to you, you and I, if we buy shares of stock, if we have the money to do it, are likely to send checks to our brokers from our own personal accounts where we have the money to cover them and write our names at the bottom of the check. Is that what Ostrer did here in ordering $210,000 worth of Belmont Franchising Corporation stock? $210,000. That's 14,000 shares at $15 a share. Find a check with Ostrer's name at the bottom drawn on his bank account.

Now, I don't say that that proves beyond a reasonable doubt that Ostrer was a member of a conspiracy, but if an individual conducts his business in an under-handed or --

MR.EDELBAUM: I object to it.

THE COURT: Overruled.

MR. MC GUIRE: If he conducts his business in an underhanded or devious or round about or circuitous manner, then, ladies and gentlemen, you are entitled to infer from that that he is trying to hide something.

Now, there is a series of documents that came into evidence in this case at different times. You remember that Mr. Michael Hellerman testified that when Ostrer told him he didn't have the money to pay for the stock as to which the checks had already bounced at Kelsey & Company, and I am talking about that 3500 shares -- I think you remember it -- Hellerman got some checks from another brokerage firm, Lincoln Securities by name, and he endorsed them all over to a person named Henry Brown, whom he identified as being associated in some way with Ostrer, and it came around the horn that eventually $52,500 of that money was presented to J. M. Kelsey & Compnay to pay for the stock.

Now, the checks were for more than $52,500. They amounted to some 77,000, if memory serves, and Hellerman testified that the remaining money over and above the $52,500 was ultimately used as a payoff to Mickey DiLorenzo.

Now, Government's Exhibit 48 and Government's Exhibit 49 and Government's Exhibit 55 are checks in evidence signed respectively Vito Soleno, Lillian Wilshinsky and Marilyn B. Goodman, all from Lincoln Securiites, and each one of them is endorsed below that Henry Brown, and the total is $77,000 in round figures.

By the way, one of these checks, the one to Marilyn B. Goodman, is dated March 18, 1970, and you may recall early in the trial I asked Fred Goodman where he was at that time and whether he recognized his wife's signature. This is one of those checks that I showed to him. Goodman was in Grenada and he identified this signature, Marilyn B. Goodman, as not being the signature of his wife.

Anyway, Hellerman testifies that the checks go to Henry Brown and we have in evidence Government's Exhibit 56 -- wait a minute. We have 57 and 58.

Now, these are deposit slips, ladies and gentleman, and they show the deposit of that $77,000 with the exact amounts of the checks to the penny in Henry Brown's account at the Trade Bank & Trust Company in New York.

Now we have Henry Brown in Exhibit 56 drawing a check to the Trade Bank & Trust Company for $52,500 and we have it stipulated that that check for $52,500 drawn out of Henry Brown's account was used to buy a bank check for the same amount, $52,500 drawn to Kelsey and Company and eventually, as you will recall, Schoengold testified he waited outside the bank while Ostrer went in to get this bank check and he gave it to him in the car outside the Trade Bank and Schoengold immediately went to Kelsey's bank to deposit it.

Now, I go through all of this to illustrate to you the circuitous and concealed nature of the transactions in this case. Nowhere on any of those documents which revolve around the payment for $52,500 worth of stock which was ordered in Ostrer's name does Ostrer's name appear. I suggest you can find from that that we have a very clever program of concealment, misdirection going on. What possible reason can you imagine, any possible reason, for a series of transactions like that to go on if it's not for the purpose of concealing the truth?

Mr. Edelbaum mentioned that he elicited from Hellerman on cross-examination the statement that Ostrer was set up, and from this Mr. Edelbaum, who I can say now is a very able lawyer, asks you to infer that Ostrer wasn't in the middle of the thing at all but that he was simply a victim. I merely remind you ofthe detail, the painstaking detail, with which Hellerman testified on direct examination about exactly what he did with Ostrer and the many conversations that he had with Ostrer, some of them -- or at least one of them in the presence of Dioguardi to convince him, in effect, that this was going to be a good manipulation and Ostrer wasn't going to be able to lose any money. That is the kind of setup we are talking about in this case, ladies and gentlemen, that is the kind of setup.

Why? Can you possibly believe that any man would spring for $210,000 worth of Belmont Franchising Corporation stock no matter what glib tongued con man told him that it was a good stock, when all he had to do was get a prospectus -- I beg your pardon -- an offering circular for the stock and find out that the book value as of the time the stuff was offered to the public was 3 cents or 10 cents a share or whatever it is? Do you think for one minute that there is any reason for anybody to have purchased or ordered the purchase of 14,000 shares of this stock at $5 -- I beg your pardon -- at $15 a share if he didn't think he was in on a sure thing, a hot ticket? Can you credit any other explanation than the explanation that Hellerman gave about that transaction, which was that he convinced Ostrer he was going to run the stock up to $35 or $40 a share, and then -- and this is the key point, ladies and gentlemen-- he was going to pay off brokers to take it off Ostrer's hands at a whopping big profit. Pay them off.

We have heard a lot of argument from the defense lawyers about how evil it is to pay off people. Who is a participant, ladies and gentlemen? And when you point the finger, don't four fingers point back at you?

Now, there are lots of difficulties in proving a case against the men behind the scenes. They are insulated by virtue of the fact that they will deal only with crooks and the principal government witnesses that appeared on this stand were crooks, and there is no two ways about it, no argument.

The only potential witnesses against people who take roles of the sort that the evidence showed Dioguardi and Ostrer took were crooks. Don't you think we would have loved it from a prosecution standpoint if we had been able to put a nice young man like Richard Wynn on the stand to say that he knew of his own knowledge that there was a criminal conspiracy going on because he overheard some conversations, or something like that? Or a nice fellow like that gentleman who owns the

Amsterdam News that appeared as a defense witness? All these fellows knew about the case is second hand knowledge that they picked up in 1971 when, without any background or foreground, they over heard snatches of conversation. That's the defense in this case on behalf of Ostrer. People who -- well, Mr. Jones couldn't remember exactly whether he had heard about Belmont Franchising stock in 1970 or 1971. Nobody is going to come here and try to tell you that Mr. Jones was committing perjury on the stand or anything like that. The government's response to Mr. Jones is that he didn't know anything more about the case than the man in the moon, and neither did Mr. Wynn.

So all right, Goodman, facing, as Mr. Goldberg told you, 20 years in jail, it's a possibility. He hasn't been sentenced yet. Hellerman admitting to some 20 felonies in five years on the witness stand. Winter, a lawyer, pleading guilty to a felony and awaiting sentence.

Schoengold, who can best be described as a lackey for Hellerman, a guy who lied under oath at the SEC so as not to point the finger at his associates. Halpern, a pitiful character who lost his business, was sunk to the tune of $100,000 or more as a result of this

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deal. Those are the government's witnesses. We take them the way they are.

But I would like you to examine very carefully, ladies and gentlemen, I would like you to examine very briefly what it would gain these witnesses to lie to you from that witness stand. Let me give you an example.

Redirect examination of Michael Hellerman. He is talking about a part of the agreement that he made with he government.

"I promised that I would never break the law again in any manner, shape or form and if I ever did break the law the government had a right to prosecute me for any of the cases that the understanding was that I would not be prosecuted. They would have a right to go back and prosecute me in every one of the cases and they warned me that they would to the fullest extent of the law if I broke the law or did anything that was wrong anymore. They warned me."

Mr. Edelbaum then says he can't hear the witness. Finally Hellerman continued: "Yes, they warned me if I did one thing wrong that to the fullest extent of the law I would be prosecuted."

Now, ladies and gentlemen, I ask you, is a man in a position like that, with the proverbial sword of Damocles hanging over his head, going to take the chance of sitting there on that witness stand and committing a perjury that could be discovered? That is what these able lawyers are trying to tell you he was doing although try might and main as much as they could there wasn't a single pertinent fact that he testified to that they could point to as being false.

In fact, so far as Mr. Goldberg was concerned there wasn't any cross-examination on the facts at all. It was cross-examination on how bad a guy he was. And he is a bad guy. We all agree. But let's look at the facts that he testified to and how he testified to them. And how he testified to them, in detail, ladies and gentlemen, for a lengthy period on the witness stand. Hellerman sat here and names days, places, amounts, events, people present at conversations from beginning to end, the whole works. He testified that he hadn't been allowed to examine the documents and that he hadn't consulted with any other Government witnesses. And, ladies and gentlemen, because of certain inconsistencies, minor ones, but inconsistencies nonetheless, between Hellerman's testimony and the testimony of other witnesses in this case, I suggest to you that the evidence shows that Hellerman's story that he hadn't talked to other witnesses is the unvarnished truth.

Now, just take that situation and keep it in your minds for a moment. Is a man in the position of Hellerman, who is adrift on an ocean of fact and dredging everything he can from his memory and not in a conspiracy with other people to fabricate a story that will please the Government, is a man in a position like that with the sword of Damocles hanging over his head going to fabricate evidence when he knows that at any moment he can be tripped up and sent sprawling?

That is what the defense would have you believe, ladies and gentlemen, but the defense can't wash away the evidence and they can't wash away the fact that on no single fact of any significance whatsoever was Hellerman even disputed, was he cross-examined, were there witnesses brought in to court to disprove it.

MR. EDELBAUM: I object to it.

MR. GOLDBERG: I ask the Court instruct the jury there is no obligation.

THE COURT: Objection is sustained.

MR. EDELBAUM: I ask your Honor to instruct the jury to disregard it.

THE COURT: The defense has no obligation to produce any witnesses.

MR. MC GUIRE: Your Honor, I had planned to cover the --

MR. GOLDBERG: I object to his response to the Court in arguing on your ruling, your Honor.

THE COURT: May I see you at the side bar?

MR. MC GUIRE: Yes, sir.

(At the side bar.)

MR. MC GUIRE: Your Honor, I know that the defendants are not obligated to call any witnesses, but I think I am entitled to argue that if the defendants had had any witnesses who could disprove a single thing that Hellerman had said, you might have expected them to appear in court. They have subpoena power just like everybody else. The missing witness routine goes both ways.

MR. GOLDBERG: I think he is speaking in a loud voice.

THE COURT: This raises the problem that you anticipated yesterday.

MR. MC GUIRE: Yes, sir.

THE COURT: A problem which was put directly into issue by Mr. Edelbaum when he spoke about witnesses that the Government didn't call. I thought it was thoroughly and completely improper, it was unwarranted, but since you made no objection I decided not to make any comment about it. I think you are certainly entitled to talk to the jury about the availability of witnesses in the language expressed in the Murphy opinion, which was acceptable to the Court of Appeals and I will certainly allow that.

MR. GOLDBERG: May I be heard?

MR. EDELBAUM: Your Honor, I respectfully move for the withdrawl of a juror and the declaration of a mistrial and I respectfully suggest to your Honor that it is the absolute rule that the defense need call no witnesses and I suggest that what I did was, perfectly proper and everything I said --

THE COURT: I don't quarrel about you. You certainly suggest everything you do is proper. I am indicatin for the record it was completely improper since the question was raised yesterday. Both of us have stated our position for the record.

MR. EDELBAUM: Yes, and I made a motion.

THE COURT: Your motion is denied.

MR. GOLDBERG: If your Honor thought it was impropel your Honor has not hesitated to interrupt my summation, as I recall. I should not be burdened by this kind of remark made by Mr. McGuire. I didn't violate your Honor's caution prior to the time I started my summation, nor during my summation, about the availability of witnesses in the manner in which you say Mr. Edelbaum did. I should not have to sit here while Mr. McGuire says that I could have called witnesses. If he wants to be specific, let him be specific or answer a specific remark made by a counsel as to the availability of a particular witness.

But to simply spill it over on me because of something that Mr. Edelbaum purportedly said that your Honor feels opened the door insofar as his client is concerned, I think is improper. This is a separate trial with respect to my client, in effect, and it is a very dangerous area for your Honor, I suggest, to permit Mr. McGuire this kind of comment.

MR. MC GUIRE: Mr. Goldberg himself in his summation commented on the fact his client didn't take the stand. I don't see where the problem is.

THE COURT: I will allow it with the admonition that I have given you.

MR. GOLDBERG: May I move for the declaration of a mistrial?

THE COURT: Yes, you may.

Denied.

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(In open court.)

MR. MC GUIRE: Now, ladies and gentlemen, I adverted to the fact that names and dates and places, names of people, were mentioned all throughout the testimony of Hellerman and the other government witnesses that testified. Facts, facts, facts, facts, facts.

The defense has alluded to the fact, and his Honor will tell you, that it is the law that a defendant does not need to call any witnesses whatsoever; the government has the obligation to prove its case beyond a reasonable doubt. There is no question about that.

However, the defense, just like the government, has the capability of calling witnesses, and there are witnesses who are available to the defense, as well as to the government. I think his Honor will instruct you that you are entitled to draw an inference, if you find it is appropriate to do so, or you may draw no inference at all.

MR. EDELBAUM: I object to that and move to strike it.

THE COURT: Objection overruled.

MR. MC GUIRE: Now, the fact that nobody disputed Hellerman's story directly or on cross examination or in any other way to the facts as opposed to proper cross examination directed to show that he was an evil fellow, you may find is a terribly significant factor.

MR. EDELBAUM: I move for a mistrial in view of the statement made by the prosecutor.

THE COURT: The objection is overruled. Your motion is denied.

MR. MC GUIRE: In summary, ladies and gentlemen, the government suggests to you that the evidence supports the proposition that bad as these men who testified from the witness stand, they are capable of telling the truth, and, further, you may find from their demeanor on the stand and the way they answer questions that in a strange kind of way for once in their rotten lives you may find from the evidence that they were telling the truth.

I would like to review the facts briefly with you. In 1968, as shown by Government's Exhibit 1, in the Belmont offering circular Belmont Franchising Corporation became an entity, came into existence. In March of 1969 it filed with the Securities and Exchange Commission a document in which it obtained the necessary clearance to sell its stock to the public. By the end of 1969, as shown by a form that was introduced in evidence at the beginning of the trial, some 28,728 shares of stock were sold in the offering.

In January of 1970, according to Goodman, Goodman arranged with a man named George Drykerman, who had control of this stock, to purchase a portion of it. You may recall that he purchased 3500 shares in the firm called EMA, a partnership, at a brokerage house called Shields & Company. Then in mid February, on a Saturday or on a holiday, Goodman and Hellerman met in the office of a man named Murray Taylor, who Mr. Goldberg points to as the villain, but who the evidence scarcely mentions, and they agree that Goodman would run the stock up in a phony way by trading shares, just like oranges, among the participants, so that it would reach a price of $15 per share from an artificially created initial price of $5 per share. This was all done, according to the testimony, as a way of indicating to the public that there was an active market in the shares of this phony corporation and that it was actually being traded, so that people like Mr. Jones could hear about it, that the price was going up, and it looked like a good thing. This was all part of a plan which was formulated at that time, and later in a series of meetings involving Hellerman, Goodman, Soldano, Schoengold, Dioguardi and Ostrer, to take the price first to $15 a share, at which point Hellerman would guarantee that Goodman and Soldano would be taken out and Hellerman would get $5 a share, you remember, for every share that was taken off Goodman's and Soldano's hands.

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An arrangement was made by which the rest of the group operated and quarterbacked by Hellerman would take the price continually up.

I would like to pause and discuss a couple of things that took place during this period of time. First, when Soldano was brought into the deal, you remember Hellerman takes him up to John Dioguardi's office, explains the whole thing to him from alpha through zebra, soup through nuts, so there is no misunderstanding, and so that at a later time Soldano can't claim that the deal was anything other than what it was.

And, finally, when Hellerman is able to strike a bargain with Ostrer, uncer which Ostrer is going to contract to purchase half the outstanding publicly held shares of this company, 14000 shares, he takes Ostrer up to Dioguardi, too, and puts the same thing on record. You can have the testimony on that read to you if it doesn't stick freshly in your minds, a meeting between Ostrer, Dioguardi and Hellerman in which the whole thing once again from alpha to zebra and soup to nuts is explained.

Along the way Ostrer is told that the basic plan is to blow the stock out into innocent people's brokerage accounts by paying over to crooked brokers.

Now, in this general period of time, towards the end of February, beginning of March, there is another meeting at a coffee shop at 99 Park Avenue, where the whole thing has gone over again, and this is where the troops get their instructions, this is a meeting at which Halpern an Schoengold and Matty Russo -- you remember those fellows, the second team, are present, and they get marching orders, "Stevie, you do this with the stock; you can probably put away 10,000 shares; Matty, you do this; Halpern, you do this."

This is where the troops get their instructions. But they are not present, the troops, the second team, are not present at the time that the inner circle is discussing the financial affairs. And so, for example, when you have Schoengold testifying about the financial arrangements, the loan by which Hellerman and Ostrer were able to purchase all of the stock, you have Schoengold testifying through hearsay from Hellerman that it was a hundred and twenty thousand dollar loan. That is how much the troops know. Hellerman, who is on the inside and who has worked the matter out in detail of a meeting at Pier 52, the restaurant, with Ostrer, Dioguardi and Hickey Di Lorenzo, can tell you the terms of the deal exactly. He started out asking for $200,000and wound up getting $60,000.

Speaking of corroboration, Bruce Halpern, who knows nothing about this loan at all, testified on the very day, on the very day -- you remember I showed Hellerman acalendar -- on the very day that Hellerman said he got that money, Halpern testified that Hellerman walks int[illegible]ffice with $60,000 in cash. Is there any way in the [illegible] that you can say to yourselves anything other than that is terribly damaging testimony.

Okay. Orders are placed for this entire block of 28,000 shares of stock at a variety of brokerage houses, approximately 14,000 shares in the name of Ostrer or his sister, Dina Gelman, at Bruce Company, Kelsey, American Global, Eastman, Dillon, and then some other brokerage houses used by associates of Hellerman, like Winter --

Winter, you remember, testified that he purchased a thousand shares in the name of -- what is it -- his son-in-law, Kleinman, at two brokerage firms called Ozol and Russell & Saxe, and Hellerman testified there was some 3500 shares or thereabouts left at Lincoln Securities which had been a part of the earlier manipulation from $5 to $15. There was some stock left in Soldano's nominees' names out there, and that took care of the entire box.

Finally, it got paid for by the end of March.

You remember, by the way -- and Mr. Edelbaum told you -- that Ostrer paid for the stock for which he was responsible.

Now, whether it makes a difference or not, notice the question and answer which Bruce Halpern testified to, and that was the testimony that Mr. Edelbaum reminded you of in summation. Halpern is asked on the stand in a long question whether the stock that was ordered at his firm was not eventually all paid for by Ostrer, and it takes re-direct examination to bring out the fact that of the 5,000 shares, a total of $75,000 worth of stock that was ordered and ultimately paid for at Bruce Company, Ostrer furnished only $16,100. And how did he furnish it? Why, in cash, of course, ladies and gentlemen, in cash.

What kind of a way is that to conduct an open and above board brokerage transaction, to bring $16,100 to your broker in cash? Is that one of the kind of things that you would ordinarily do? Is that a transaction which is conducted in a way so as to be completely above suspicion? Or is that the action of a conspirator who is tryingto hide his transaction.

Now, from the end of March through the month of April, as Hellerman and various other witnesses testified, the price of the stock began to creep up from 15 dollars a share; he was buying here, selling there; finally Hellerman is worried about paying offthe loan which had been made by Hickey Di Lorenzo and for which at some point in time Hellerman acquired the obligation to pay the "vig", a word you may not all be familiar with, but a word which means interest in certain quarters, and so by arranging for somebody else in Florida to buy stock in the high twenties, at 27, 28 dollars a share, Hellerman calls from Florida and gets Schoengold to call Ostrer or Ostrer's office and say, "You can sell stock."

And lo and behold, stock appears in the name of William Kilroy in the exact amounts that Hellerman and Schoengold tetified to being sold from the brokerage house where Ostrer's wife is a sales representative, American Global Investors, to the brokerage house which Schoengold directs the sale be made to, Brad-Shaff.

If you have any doubt about that transaction with Mrs. Ostrer receiving the commission on the sale, you can look at the confirmations and the order tickets which were created in the ordinary course of business at this brokerage house as a paper record of the transactions, 2500 shares of stock sold apparently by Miss Kilroy, who was an employee of Ostrer's, from American Global Investors to Barad-Shaff.

It is Hellerman's testimony that the proceeds of that sale, which if you add them up as little Miss Richardso a breathe of fresh air in the courtroom, did, that amounts to $67,806. The proceeds of that sale, according to Hellerman, were used to pay off Mickey Di Lorenzo for the loan that he had made, to pay the vigorish, the "vig", the interest that had been run up to that point, and to split th difference between Hellerman and Ostrer.

Well, the rest of the story is history, ladies and gentlemen. The market for reasons completely beyond the control of the conspirators fell apart. Along came somebody with stock that nobody knew about and started to sell it at a time when the market had been built up by this whirlwind trading to apparently a level of prices in the upper 30s. Lo and behold stock began to appear on the market and somebod who genuinely held stock that he wanted to sell, wanted to sell it at these inflated prices. Nobody would buy. The game of musical chairs stopped right then and there, and the conspirators who had the stock at that time were left standin with it.

That sets up another series of meetings. You will recall the testimony about them in detail, meetings at Hellerman's office, meetings at Dioguardi's office, meetings at Dioguardi's home in Mahopac, all of which meetings ha to do with the subject of what to do about this unfortunate situation, and that was discussed in detail.

Well, first off, there is the problem of allocating the losses among the conspirators. Ostrer is screaming; Soldano is screaming. They held stock, they have lost money. And Dioguardi is in there acting as a mediator, telling Hellerman how much time he has to make the thing good, telling Soldano to leave the room while he discusses the subject with Hellerman, asking Schoengold's advice on whether it is a good idea to conduct a bust-out scheme, which is a bankruptcy fraud, and Schoengold tells him it is too risky. Dioguardi says nothing and the meeting ends there very quietly.

Well, that is the story of this case, ladies and gentlemen.

I ought to mention to you something that has been kind of buried during the course of our various lawyers' orations here. There are, I believe, 16 counts in this indictment that are going to be submitted to you, the jury. There is one conspiracy count; that charges the defendants with participating in a criminal scheme to manipulate the price of Belmont stock from 5 to 15, and then from 15 upwards for their own profit. And it charges a good many other things. Judge Edelstein will cover that subject, I am sure, very thoroughly in his instructions to you.

Then there are what we call substantive counts. You remember I mentioned that word to you at the beginning of the trial. Substantive means -- well, they are fraud counts. There are 18 separate crimes charged, each one of which is said by the indictment to be a fraudulent transaction, a purchase or a sale of stock which was conducted during the course of this conspiracy, during the course of this partnership in crime, if you will, by others than these two defendants for the most part, although some of them involved Ostrer directly, but as to which you are to decide whether these defendants are criminally responsible.

Now, the 18 counts involve 13 separate stock transactions, that is, 13 transactions in which stock was either purchased or sold, a confirmation was sent through the mail, and thus the Federal Security Laws, if the government's evidence is sufficient, were violated.

The first transaction is one in which Fred Goodman bought 700 shares of stock at Bruce & Company.

The second is a transaction in which Taff Foods, Incorporated -- you remember, that is the proprietor of the coffee shop at 99 Park Avenue, bought a thousand shares at J.M. Kelsey & Company.

The third is one in which a man named Steven Drourr, one of Hellerman's nominees or customers, more

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properly, bought 400 shares at Kelsey.

Then Fred Goodman's sale of the 700 shares that he had earlier bought at Bruce & Company.

Then Ostrer's purchase of 3500 shares at Kelsey, and his purchase of 2000 shares at Bruce Company.

Then the transaction in which Mark Kleinman, care of Morris Winter, bought 500 shares at R.J. Ozol & Company and sold 500 shares at Russell & Saxe.

There is the transaction in which Joel Goldfarb, that is, Hellerman's brother-in-law, bought a thousand shares at Kelsey.

There are the two transactions in which in the name of Kilroy 2,000 shares were sold at American Global Investors.

And, finally, there are the three transactions in which stock was bought in the name of Louis Rosenberg. You remember that Winter testified he placed the order and then sold at the same timeat $6 a share higher in the name of Martin Roth at R.J. Ozol & Company.

Now, his Honor, I am sure, is going to instruct you fully on your responsibilities in dealing with those counts. But there are 13 separate stock transactions involved, some of which duplicate each other as to counts -- let me state that a little better -- there are some counts in the indictment which are going to be submitted to you which involve the same transaction. Counts 13 and 28, for example, involve the Fred Goodman purchase of 700 shares at Bruce Company.

Well, ladies and gentlemen, I think we have had enough flapping of mouths here for a while. If you have not understood the evidence here by now, then a lot of gum beating by me is not going to explain it to you any further. His Honor will instruct you on the law after lunch. I am not going to stand here and rant and rave and ask you, tell you that you must bring in a guilty verdict. All the government asks of you in this case is that you treat the evidence fairly, without fear, without prejudice, without bias, to analyze the evidence, that you look at it carefully, and that you decide as your conscience dictates whether these defendants are guilty or innocent. And if you perform that job conscientiously, as I am sure you will, ladies and gentlemen, the government, the United States of America, will have been well served.

THE COURT: We will suspend now for lunch, ladies and gentlemen. Since it is past 1 o'clock, there may be some problems in seating. We will resume again at 2:30. At that time the Court will instruct you.

THE CLERK: The Court stands in luncheon recess

mmbr 14

until 2:30.

(Jury excused.)

(In the robing room.)

THE COURT: Do you wish to be heard?

MR. GOLDBERG: Your Honor, I understand most respectfully that your Honor intends to keep the alternates once the jury begins its deliberations. I believe I had an appeal in the Second Circuit, and the rule, I think is specific that the alternates must be discharged at the time the jury commences its deliberations, must be without any discretion left to the trial court.

THE COURT: Well, I am exercising that discretion.

MR. GOLDBERG: Without any discretion.

THE COURT: I ordered the alternates to be sequestered, and I am fully aware of what I am doing.

MR. GOLDBERG: Most respectfully I object to the practice, and I inform your Honor that if a juror should become ill, it is not our intention to consent to a replacement by one of the alternates. There are many Supreme Court decisions on the point saying we are entitled to a trial by the jury as originally constituted once deliberations commence.

In light of that and in light of the fact that the rule specifically requires that the alternates be discharged

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at the commencement of deliberations, I would only ask your Honor to explore that further if you deem that is necessary.

THE COURT: Perhaps you and I misunderstand each other. This jury is going to deliberate as a jury of 12 and the alternates will not deliberate with them. Did you understand that?

MR. GOLDBERG: Of course, I did. But the rule says they must be discharged at the commencement of the deliberations, your Honor. I am sure whatever your Honor does will be proper and appropriate.

THE COURT: Just so you will understand why I am doing this, in the event, any juror becomes disqualified, I will replace that jury with an alternate with instructions to the jury that they start their deliberations absolutely de novo and to strike everything that has gone on before such event occurred.

MR. EDELBAUM: Don't you want some authority? Will you Honor permit me to point out to you, No. 1, that that is absolutely against the rules; No. 2, it is against the law; and may I point out that in the state court there is a Court of Appeals decision where alternates were sequestered and kept apart, and then a juror became ill and was replaced without the consent of the defendant, with some instructions like your Honor would give, and the Court of Appeals reversed, and that is the rule of law in the state, that unless a defendant consents there can be no replacement of a juror who becomes ill once the jury starts to deliberate.

MR. GOLDBERG: Even counsel can't waive that. I submit, your Honor, that I am fully familiar with this subject.

MR. EDELBAUM: If your Honor wants to keep them for any such purpose --

THE COURT: That is the only purpose.

MR. EDELLAUM: Your Honor, that would be, I think, improper. You should reexamine the law, because I am sure you will find that is completely against the law, for any Judge to replace a juror who has become ill once the jury has started to deliberate.

THE COURT: Did you say you had an appeal here in this circuit?

MR. GOLDBERG: I had an appeal. The matter was argued by Jerry Londin. The name of the defendant was Harold Friedman. I can call Jerry Londin and get the citation.

THE COURT: Did the Court of Appeals here decide that point?

MR. GOLDBERG: In that case the alternates were not discharged, but that was harmless error because

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even though it ran counter to the rules, they never ran into a problem of being replaced, so it was harmless.

THE COURT: The only time they would have that problem based on the decision would be if a juror was excused and I substituted an alternate?

MR. GOLDBERG: I submit that the Court indicated -- and I think if I can only look at the rule -- I don't mean to be obstructive --

THE COURT: Will you call Jerry Londin during the luncheon recess and get the citation.

Do you have anything to offer?

MR. MC GUIRE: I am not familiar with that area of the law. I would prefer to look it up.

THE COURT: Get me the citation.

(Luncheon recess taken.)

AFTERNOON SESSION
2:35 p.m.

(In open court; jury present)

THE CLERK: The Court is about tocharge the jury. Any spectator wishing to leave the courtroom may do so now or remain seated until the completion of the charge.

Marshal, please lock the door.

THE COURT: Ladies and gentlemen, should my voice fail to reach you at any time, please call my attention to that by merely raising your hand.

We now come to the part of the case where the evidence is in --

JUROR: I am sorry. That light is glaring.

THE COURT: The lawyers have presented their arguments and you are about to exercise your final judgment, which is to pass upon and to decide the facts in issue that are in the case.

You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of witnesses, you resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case. I shall later refer to how you determine credility of witnesses.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept thelaw as I state it to you in these instructions, and to apply it to the acts as you find them. The logical result of that application is th verdict in the case.

With respect toany fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the government or the defense, may have said with respect to matters in evidence during opening statements, during the trial, in questions in colloquy with the Court in art of in summation, is not to be substituted foryour own recollection of the evidence.

So, too, anything the Court may have said during the trial, or may refer to during the course of these instructions, as to any factual matter in eviden is not to be taken by you in lieu of your own recollection. The case must be decided by you upon the sworn testimony of the witnesses, any stipulations entered into among counsel and such exhibits as were received in evidence.

Of course, you will dismiss from your minds completely any evidence which has been ruled out of the case by the Court and you will absolutely refrain from speculation or conjecture about the nature or effect of any discussion between Court and counsel.

Before we consider the precise charges against the defendant on trial, some preliminary matters should be noted. As you know from the developments during the trial, the grand jury that returned this indictment named Anthony DiLorenzo, George A. Drykerman, Steven Schoengold, John M. Kelsey, Murray Levine, Edward N. Palermo, Matthew Russo, Bruce Halpern, Harvey Bertram Pollak, William Kilroy and Walter Tepper as co-conspirators with the defendants but did not indict them. The reasons why these persons were not indicted must play no part in your deliberations except insofar as it may be considered on the issue of credibility, as to which I shall hereafter refer.

Whether persons who may be involved with others in alleged criminal conduct should be indicted is a matter within the sole discretion of the United States Attorney and the grand jury. It should be obvious, therefore, that because someone is or is not indicted has on its face no connection with the guilt or innocence of someone else who is indicted. Thus, you may draw it is as acceptable as direct evidence.

You should apply your common sense and draw such reasonable inferences as may be warranted by facts proved to your satisfaction. In determining these issues, you may consider any statements made, acts done or omitted to be done by the accused, together with all the other facts and circumstances in evidence which reasonably relate to a determination of state of mind.

We now come to another important function of the jury, and that is determining just where the truth lies. It is your exclusive function to decide which witnesses you will believe, and this is so as to every witness, whether called by the government or by the defense And, of course, I have mentioned that instruction earlie to you and I emphasize that credibility of witnesses is exclusively in your domain.

You are not to be influenced by the number of witnesses, you are not to be concerned with the quantity but with the quality of the evidence.

The task of evaluating the credibility of witnesses is exclusively the jury's. In evaluating the credibility of the witnesses who have testified, you mu use measures of credibility which you will apply in terms are your own everyday common sense and experience in dealing with people and judging events.

You are not bound to believe unreasonable statements or accept testimony that defies your common sense or insults your intelligence just because the statements are made on a witness stand in a courtroom under oath.

You may examine the manner of a witness while on the stand. What was the manner and character of his testimony? Was it straightforward or was it evasive? Did the witness have any personal motive to testify as he did? Did the witness have any interest in the outcome of the case? How did the witness' testimony stand up against cross examination and against contradictory testimony? Were there any discrepancies in the witness' testimony or did the witness contradict himself? Did the witness on some former occasion make a statement inconsistent with his present testimony?

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness and not to establis the truth of those statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

GW13

You may recall that the witness Morris Winter on redirect examination testified that the reason he had not mentioned the name of John Dioguardi in his testimony before the SEC was that he had some thought that it might endanger him. I instruct you as a matter of law that you may consider this testimony only for the purpose of explaining Mr. Winter's prior inconsistent statement made before the Securities and Exchange Commission.

Discrepancies in a witness' testimony or betwee his testimony and that of others does not necessarily mean that the witness should be discredited. An innocent failure of recollection is not uncommon. Moreover, two or more persons witnessing an incident or a transacti may see or hear it differently.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or to an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

If any witness wilfully has testified falsely to any material fact, you must reject the false testimony and you may disregard all his testimony or accept such pa of it as you believe worthy of belief.

Now, a witness may be discredited or impeached by contradictory evidence or by evidence that at other times he made statements which were inconsistent with his present testimony. If you believe that any witness has been impeached or discredited, it is your exclusive province to give the testimony of that witness the credibility, if any, that you think it deserves.

In connection with the question of credibility, I want to bring to your attention one of the rules in this court which relates to the testimony of an accomplice.

Based upon the facts of this case as alleged by the government, the testimony of Goodman, Hellerman, Halpern, Winter and Schoengold is what is characterized as accomplice testimony.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent.

In the prosecution of a crime, the government is frequently called upon to use witnesses who are accomplices or co-conspirators possessed of sordid backgrounds, that is to say, accomplice witnesses may be felons or admitted perjurers. Often it has no choice but to use such witnesses. This is particularly so in cases of conspiracy. Frequently it happens that only the members of the conspiracy have evidence which is relevant to and is important in a case.

GW15

The government must rely upon witnesses to transactions such as they are. Otherwise, in many instances it would be difficult, if not impossible, to detect and prosecute alleged wrongdoers.

An individual does not become incompetent as a witness because of an alleged participation in the crime charged. The testimony of an alleged accomplice is not to be rejected unless the jury thinks it has no weight. Indeed, defendants may be convicted on the uncorroborated testimony of an accomplice. But you may not convict upon the unsupported testimony of an alleged accomplice unless you believe that unsupported testimony beyond a reasonable doubt.

However, you should keep in mind that persons in the position of accomplices may be motivated by personal reasons connected with promises, grants of immunity, fear of prosecution or other special reasons to testify as prosecution witnesses. Therefore, scrutinize the testimony of the alleged accomplices with diligence, care and caution and accord to it whatever weight you find it deserves in view of all the evidence in the case considere as a whole and in your good judgment.

At this point it should be noted that the law does not compel a defendant to take the stand and to testify, and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify. You must not permit a defendant's failure to testify to weigh in any degree against him, nor should that fact enter into the discussions or deliberations of the jury in any manner.

I charge you, ladies and gentlemen, that the question of possible punishment of a defendant in the event of his conviction or of possible stigma or of any consequences or repercussions is definitely no concern of yours and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests entirely and exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of the defendants solely upon the basis of the evidence and the law to be applied to that evidence as given to you by the Court.

Should you require that the testimony of a witness in whole or in part be read to you, your request in writing by your foreman, who is number one in the jury box, Mr. Sober , to that effect will be honored.

Occasionally the Court undertakes to marshal the facts, to summarize the testimony. I have deferred doing that in this case. The case has not been of very long duration. I have charged you that it is your duty solely and entirely to find the facts. I have indicated to you that comment by Court or counsel on the facts is not binding upon you if it differs from your own recollection. Accordingl I have not marshalled the facts, but I repeat again, should yo wish to hear any of the testimony in whole or in part your request will be honored.

In closing, ladies and gentlemen, let me point out there is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good common sense. Consider the evidence in the case and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations o human beings.

I instruct you that a party is entitled to the same benefit from evidence that favors his cause or defense when produced by his adversary as when produced by himself.

If you fail to find beyond a reasonable doubt that the law has been violated by these defendants, you shoul not hesitate for any reason to find a verdict of acquittal. But, on the other hand, if you should find that the law has been violated as charged by each of these defendants, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

I charge you that if in any of these instructions any ruling, direction or idea be stated in varying ways, no inference therein is intended by me and none must be inferred by you. For that reason, you are not to single out any particular sentence or any individual point or instruction and ignore the others. You are to consider all the instructions as a whole and to regard each in the light of all the evidence.

You must arrive at a unanimous verdict as to each count pursuant to the instructions I have given you. Since guilt must be established beyond a reasonable doubt, all of you must be convinced beyond a reasonable doubt. You are to return separate verdicts of guilty or not guilty as to each count in the indictment and, more particularly, as to each defendant named in a particular count. Under these instructions you may find John Dioguardi guilty or not guilty of the crimes charged in Counts 1, 9, 13 through 19, 28, 29, 31 through 36, 38 and 39. You may find Louis Ostrer guilty or not guilty of the crimes charged in Counts 1, 9, 14 through 19, 29, 31 through 36, 38 and 39.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an

GW19

agreement. Each of you must decide the case for himself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. I repeat your verdict must be unanimous.

Discuss and weigh your opinions dispassionately, without regard for sympathy, prejudice or favor. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.

Both the government and the defendant have a right to demand, and they do demand and expect, that you will conscientiously consider and weigh the evidence and apply the law as given to you by the Court, and that you will reach a just verdict regardless of what the consequences of such a verdict may be. Adopt that conclusion which in your good conscience appears to be in accordance with the truth.

This Court would remind you that in your deliberations in the jury room there can be no triumph except in the ascertainment and declaration of the truth.

I have requested the clerk to prepare a form for your assistance during your deliberations. It contains a listing of all counts as to which you must reach a verdict. The form has been provided for your convenience. You may use it if you so desire, but you are under no obligation to do so.

I shall now instruct the clerk to give the form to the foreman of the jury.

When you have reached your verdict, inform the Court through the marshal. You will then be asked to return to the courtroom to announce your verdict orally.

If you are divided, do not report how the vote stands, and if you have reached a verdict do not report what it is until you are asked in open court. However, you may at any time indicate through the marshal that you have reached a unanimous verdict as to one or more counts or as to either defendant.

You may have the indictment and any documents and exhibits which are in evidence to take with you into the jury room for consideration during your deliberations.

I commend you with the utmost sincerity to the faithful performance of your sworn duty.

Do you wish to see me at side bar?

MR. GOLDBERG: I do, your Honor.

THE COURT: Ladies and gentlemen, we will take a brief recess. You are not to commence your deliberations until you are instructed to do so.

(Recess.)

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(In the robing room.)

MR. GOLDBERG: There is a matter of great importance I am sure your Honor has overlooked. You have framed the instructions on reasonable doubt in clear contradiction to the Court of Appeals instruction in Augeci against the United States, in which the Court said that it is improper to frame an instruction on reasonable doubt in the affirmative, namely, "reasonable doubt is such a doubt as would cause you to act in a more important or weighty matter relating to your own lives." It must be framed in the negative, "such a doubt as would cause you to hesitate to act in matters of importance in your daily lives."

The government in request No. 3 correctly gave that as its request, "It is such a doubt as would cause you to hesitate to act in matters of importance in your daily lives."

I might call to your Honor's attention that in Augeci the Court of Appeals said that they can't understand how trial judges continually ignore the instructions given by the Court of Appeals on reasonable doubt when they try to make it abundantly clear that it must be framed in the negative in order to survive at the Court of Appeals level where an objection is made.

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and with the intent to do something the law forbids. In determining whether defendant has acted knowingly and wilfully, it is not necessary for the government to establis that the defendant knew that he was breaking any particular law."

MR. EDELBAUM: I followed the charge as proposed by the government and I remember that the evil purpose was left out. Your Honor changed it in that manner. I remember that distinctly, and I respectfully except to the leaving out of thatlanguage.

MR GOLDBERG: I join with Mr. Edelbaum.

My next exception, your Honor, is that --

MR. MC GUIRE: Is it your Honor's purpose to go over that ground again?

THE COURT: No, it is not.

Thsu far, my only purpose is to go over the reasonable doubt, unless some other matter is developed.

MR. GOLDBERG: I respectfully except to your Honor's failure to instruct this jury in any way as to the effect of prior convictions on the issue of credibility. Your Honor knows that loomed very large in this case, and the jury was simply told, I believe, that a witness does not become incompetent by any reason of prior convictions or things of that sort. But I do think that your Honor has a responsibility to instruct the jury as to what weight, if any, or value or importance prior convictions have in the assessment of credibility.

THE COURT: That was one of your requests to charge, as I recall, and that request was denied.

MR. EDELBAUM: And I respectfully except to your Honor's failure to include instructions to the jury th they may in assessing the credibility of any witness who ha been previously convicted of a crime, they may use that in assessing his credibility while it does not disquality him merely because he was convicted of being a competent witness. But I think most respectfully you have the obligation to instruct the jury that they have the right to weigh it on the issue of credibility.

MR. GOLDBERG: May I proceed?

THE COURT: You may.

t4/3 p.m. MR. GOLDBERG: I believe toward the end your Honor said something about the fact that they may give this kind of case the same consideration as they would give any matter that they are called upon to decide which evolves weighing or evaluating evidence, things of that sort. I think that runs counter to the whole thrust of the reasonable doubt instruction. They treat this case not as an ordinary matter that they are called upon in their

THE COURT: Very well.

MR. MC GUIRE: The government has not examined the document and we have no desire to, your Honor.

THE COURT: The alternate jurors through the marshal have requested that they be permitted to read a newspaper subject to an examination by the marshals for the purpose of scrutinizing to determine if there are any matters or material that should not come to their attention.

Unless thereis any real objection, I propose to to give it to them.

MR. PANZER: No objection.

MR. EDELBAUM: No objection.

THE COURT: Is there anything else?

MR. EDELBAUM: No, your Honor.

(The jury was taken to lunch at 12:00 o'clock noon and returned to the jury room to continue their deliberations at 1:16 p.m.)

(At 2:25 p.m. the following took place in the robing room.)

THE COURT: I have a note from the jury: "Your Honor, Judge Edelstein: We, the jury, respectfully request the following:

"1. Testimony of Mr. Hellerman regarding the meeting at the Pier 52 as to who was there, what was said, and questions and answers of direct, cross examination and redirect relating to that testimony.

"2. As in 1, Schoengold's testimony regarding that same meeting (direct, cross examination and redirect).

"3. Mr. Hellerman's testimony in reference to the manner in which his friendship with Mr. Dioguardi developed. This is to include cross examination and redirect, if any."

Let's get the transcripts and agree as to what is to be read to this jury.

MR. MC GUIRE: As to one portion, your Honor, I think the answer is very easy. The jury has requested Schoengold's testimony with respect to a meeting at Pier 52 and Schoengold did not testify directly as to the meeting, although he did testify to speaking with Hellerman afterwards.

THE COURT: It is not what they asked, so I think that in connec[illegible]n with Schoengold's testimony we must advise them t[illegible]re was no testimony by Schoengold regarding any meeting at Pier 52.

MR. EDELBAUM: I would have to look at it.

THE COURT: You have the transcript.

MR. EDELBAUM: I just want to get a piece of paper so I can jot down and so I can go out and look at the transcript.

THE COURT: Would you like the note for the moment?

MR. EDELBAUM: I would appreciate it very much.

THE COURT: What about you, Mr. Goldberg?

MR. GOLDBERG: I will work with him, your Honor.

THE COURT: Did you want to take a look at your transcript in the meantime?

MR. MC GUIRE: Yes. That will be the only way to do it.

THE COURT: Start blocking out what you think is related.

(Short recess.)

(The following took place in the robing room at 2:40 p.m.)

THE COURT: I have another note from the jury:

"May we have the date when Mr. Hellerman became a government agent and when it stopped."

MR. EDELBAUM: That would be from the testimony of course.

MR. GOLDBERG: November is the only reference you have in the testimony, November, 1970, after he was indicted in Imperial.

MR. Mc GUIRE: Hellerman's direct testimony on that. I guess that was first mentioned in cross examinati I am not sure.

MR. GOLDBERG: There was an objection by the government. I said informant. November, 1970.

THE COURT: Can you stipulate?

MR. MC GUIRE: I don't want to stipulate the fact that he was a government agent. That is the problem with stipulations.

MR. GOLDBERG: We will find the testimony.

THE COURT: How are you progressing on the other?

MR.EDELBAUM: We are getting along.

Your Honor, I dislike having to leave at this point. Do you think there is any way that one of your law clerks might communicate with the Stock Exchange?

THE COURT: No. I would like to accommodate you but I don't think I should get into that aspect of it. If you had a conflict with another Judge I would not hesitate on occasion to intervene in that respect. But I think the New York Stock Exchange might take some umbrag and feel that I should not.

MR. GOLDBERG: All right.

MR. MC GUIRE: I can make this offer, your

Honor. I understand Mr. Goldberg's problem and sympathize with him. If it would be of any assistance in the problem, I would be happy to verify the fact that there is jury deliberation going on and that Mr. Goldberg is obviously heavily involved in a crucial matter here.

MR. GOLDBERG: That is generous, as usual, and I really appreciate that, Mr. Mc Guire.

THE COURT: It might help.

MR. GOLDBERG: Definitely. I think it would.

THE COURT: Would you do that?

MR. MC GUIRE: I would be delighted to do that, your Honor. I don't think coming from me there would be any hint of coerciveness about it, which I am sure is what your Honor is worried about.

THE COURT: Well, yes. And just to add another point to that, the New York Stock Exchange is sometimes a litigant in this court, and I just don't think I should call them.

MR. GOLDBERG: Thank you for your patience in allowing this to be talked about, because I think Mr. Mc Guire's suggestion might well assist me.

THE COURT: Will you do that?

MR. MC GUIRE: Yes, sir, I certainly will.

MR. EDELBAUM: On the question of when he stopped, he has not stopped. That is a difficult question.

MR. MC GUIRE: The fact is, of course, that Hellerman never was a government agent. I think the best we can do there is to have read to the jury the appropriate testimony on the subject.

MR. GOLDBERG: Rather than read his entire testimony, there is no mention of when he stopped, nobody asked him that question.

THE COURT: All we can do is give them the testimony

MR. GOLDBERG: The negative would require a reading of all the testimony. You will find nobody asked him when he stopped. So we might advise the jury that that was not asked.

MR. EDELBAUM: The best answer to that is there is no evidence in the case as to when he stopped or if he stopped.

MR. MC GUIRE: Your Honor, I think it would be most improper for the Court or counsel at this stage of the jury's deliberations to make any statement about whether there is evidence or is not evidence on any matter..

THE COURT: The problem is you are suggesting, as I see it, the government contends that he never began to act as a government agent.

MR. MC GUIRE: Exactly so.

THE COURT: All we can do is give them the testimony.

MR. EDELBAUM: I cannot understand the government' contention, but it is the jury who has to determine whether he was a government agent.

THE COUR' I would say that the only answer we can possibly provide for their information in connection with the question, "May we have the date," is by reading the testimony to them concerning --

MR. MC GUIRE: Concerning Hellerman's relationship with the government.

THE COURT: That is all.

MR. GOLDBERG: That is going to be a rather tedious task, your Honor.

THE COURT: Be that as it may.

MR. EDELBAUM: It's going to have to be.

THE COURT: Unless we can arrive at some stipulation which could be satisfactory to all of us. Absent that, I can readily foresee that we may have many, many days ahead of us.

MR. GOLDBERG: Mr. Edelbaum, may I make this suggestion: If the questions and answers are read with respect to any became, not an agent, because you will see it makes it clear he was an informant in 1970 and that he went in the office on a number of occasions while he was committing crimes, and that is all there is. No one has asked him when he stopped.

MR. MC GUIRE: No.

MR. GOLDBERG: You think that is wrong?

MR. EDELBAUM: We can't do that for this reason, because there were various questions asked by Mr. McGuire about the agreement, direct and redirect, and they have to make a determination, and I don't think it is for the Judge or any of us to suggest that he was an agent, that he was not an agent, that he started or stopped. They have to make a determination from the evidence. All we can do is give them the evidence.

MR. MC GUIRE: May I be heard on this? It seems to me that the jury has asked a simple and limited question. They have not asked anything concerning the terms of Hellerman's relationship with the government.

THE COURT: They have asked for the dates.

MR. MC GUIRE: They have asked for the dates when he became what the jury characterizes inartistically a government agent and when he stopped. The only responsive answer that can be given to the jury, I think, is a reading of the testimony, whether it be direct, cross, redirect, or whatever as to the date of his association with the government. If they want the testimony read as to the terms of his association with the government, they can clearly have that. But it is perfectly apparent to me that they have not asked for it and that it would be improper to volunteer it.

MR. EDELBAUM: How are we going to determine, your Honor, what the jury means? They may have determined as a fact from the question that he was a government agent.

MR. GOLDBERG: Why not let it rest at that. That is to your advantage.

MR. EDELBAUM: I don't want anybody to say that the government contends that he is not an agent or anything like that. They have not asked that. There is no date her by a question. But from the evidence they can determine the date that he finally came in to testify. But I don't see how we can answer that question a particular date or a particular answer.

THE COURT: Let me ask you this, gentlemen, wouldn't it be desirable to deal first with the three requests and let us get that blocked out so we can at least start them deliberating further?

MR. GOLDBERG: May Mr. McGuire make this call for me? There are five different arbitrators coming

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on line 7, not 8.

MR. MC GUIRE: My carbon copy, the question beginning, "Now you told us on direct --"

MR. GOLDBERG: And it ends on 748, line 16.

THE COURT: Very well.

MR. GOLDBERG: What do we do with the other one?

THE COURT: There is no point in sending this back if we can thrash it out. We can arrive at some decision.

MR.EDELBAUM: May I make a suggestion?

THE COURT: Certainly.

MR. EDELBAUM: Assume that you answer the question by saying, "We from the evidence cannot direct your attention to any particular dates to answer either of your questions; you, the jury, must determine the answer," without referring to agent or informer or anything."

If you feel that the testimony of Mr. Hellerman should be read to you in any way to help you, we will be pleased to do that. Consult with yourselves and let us know what your answer is."

I think that would be a pretty apt way of solving this very difficult question in view of Mr. Mc Guire's feeling about it and our feeling about it. We can hassle this about for an awfully long time.

MR. MC GUIRE: It seems to me that we are on the horns of more an apparent than a real dilemma. The jury has asked when Hellerman began to be an agent for the government and when that relationship ended, in substance. As lawyers we quarrel over the use of the word "agent."

But it clearly is not a word of art to the jury, and it is perfectly obvious to me that there is testimony of Hellerman's which is responsive in that he testified about when his relationship with the government began, during late 1970, and there is testimony about when his written agreement was consummated, which was in October of 1972. That is short and direct testimony, and it seems to me as directly responsive to the jury's question. To say, as Mr. Edelbaum has suggested, that we cannot respond directly to the jury's question is with all due respect to Mr. Edelbaum, sophistry.

MR. EDELBAUM: There is no end to his being an agent as yet. So I don't know how that could solve the question. That is the point of my whole argument. So I submit, your Honor, this is a very debatable question. Mr. Mc Guire objects to the use of the term agent. He said it is a word of art. That is his opinion. The jury

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may have concluded that he was an agent. So I don't see how we can divert their attention by the Judge or anybody else saying to them he was not an agent, he was an informer or something like that.

MR. MC GUIRE: I am not suggesting anything like that. I am simply suggesting the testimony be read.

MR. EDELBAUM: Let me finish, please. All I can say is if Mr. Mc Guire wants to pick out what he feels will answer the question, I would be very happy to look at it while the jury is considering the other thing, and then I will make a determination, Judge.

THE COURT: We will take care of the first three questions, and then we will see if we can reach a solution as to the other. Would it not be agreeable to have a discussion as to what portions of the transcript you think bear on the question?

MR. GOLDBERG: With all due respect, don't you think we ought to go out and do it, and then have the jury come in and read all of it, insead of having them come back in again?

THE COURT: I would prefer it that way, Mr. Goldberg.

MR. EDELBAUM: I will go along with Mr. Goldberg.

MR. GOLDBERG: We can go outside. Give us a couple

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of minutes to resolve this.

THE COURT: I will take any reasonable suggestion, surely.

(Proceedings continued again at 4:15 in the robing room.)

THE COURT: I have a note:

"Please furnish us with the exhibit(s) which consisted of check(s) where defendant Ostrer's name was signed on back incorrectly as Oster, as well as an exhibit with Ostrer's name spelled correctly."

MR. MC GUIRE: That should be easy enough.

MR. EDELBAUM: Let me read that note.

THE COURT: Can we get at it and sort out the exhibits?

MR. MC GUIRE: Your Honor, there are some potential problems here, because the note calls for the check on which Ostrer's name was signed Oster, and the exhibit which is obviously being referred to, I believe, is Exhibit 59, and that does not contain a signature Oster. It contains a notation with the name Oster, but it does not purport to be a signature.

MR. EDELBAUM: I don't think we have to go into that. Obviously, they are indicating the exhibits that were passed to the jury. It was the confirmation with the

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THE FOREMAN: Yes.

THE COURT: Now, your next note is, "May we have the date when Mr. Hellerman became a government agent and when it stopped."

That question poses some problems for us and we still are in the process of attempting to prepare informati to provide you with. So we are going to pass that by. This won't stop your deliberations.

THE FOREMAN: No.

THE COURT: Now I come to your next note, which I will read into the record:

"Please furnish us with the exhibit(s) which consisted of check(s) where defendant Ostrer's name was signed on back incorrectly as Oster, as well as an exhibit with Ostrer's name spelled correctly."

I am not entirely sure that I can discern your entire request there, and so I have decided that perhaps it would be helpful to you if we sent you all the exhibits Would that be satisfactory and helpful?

THE FOREMAN: Yes.

THE COURT: Would you like it?

THE FOREMAN: Yes.

THE COURT: That has been prepared for you and will be sent to you into the jury room.

And, in the meantime while you are deliberating we will try to deal with your question concerning the dates.

(Exhibits are given to the foreman by the clerk.)

THE COURT: Very well, ladies and gentlemen.

(The jury returned to the juryroom at 5:20 p.m.)

(In the robing room at 5:25 p.m.)

MR. MC GUIRE: Your Honor, I think I have a suggestion as to how we mighthandle this in an orderly manner, and before we start going through the transcript I would like to make a preliminary evaluation of the situation.

There is some rather concide redirect and perhaps recross examination of Hellerman on the subject of when he first became an informant for the government. There is also a good deal of testimony which we have attempted to isolate with respect to other matters, including, among other things, the date when Hellerman entered into the formal written agreement with the government.

Now, I am frank to say that I don't know from the language of the jury's note whether they are interested in the formal agreement or not. I rather suspect it is comprehended within the terms of the note, but I think if we decide that matter in principle we can proceed with the picking out of the appropriate testimony in more orderly fashion.

MR. EDELBAUM: If you would go to the first page that you suggest and if his Honor would have a copy of the transcript and then we look at it and we say eithe we agree or don't, and then have the judge decide it, I think we can go on.

MR. MC GUIRE: If the Court please, this subjec was developed by counsel in the usual way, which is to sa that it was developed in a general way first and then approached specifically. I think it might be more useful if I go towards the end of Hellerman's examination.

MR. EDELBAUM: What is the page?

MR. MC GUIRE: Start at page 936, the area of the transcript between 936 and 943 may be the best way to begin. I would suggest we all familiarize ourselves with the material between 936 and 943 to begin with and attempt to agree on what matter in that section of transcript should appropriately be submitted to the jury in answer to its question.

MR. EDELBAUM: First of all, on page 936 there is absolutely nothing that would in any way relate to the note. Now, if you start at line 6 on 937, that would be a starting point. But I can't see where 936 has a word in any way relating to the note.

MR. MC GUIRE: The reason I suggest 936, your Honor, is it is a point in time that is fixed, and that point in time, as the jury will undoubtedly recollect, is June 1st of 1971.

MR.EDELBAUM: Judge, that develops later on. But I think it makes complete sense to start with line 6, which says:

"Q Now, sir, at that time how long had you been acting --"

THE COURT: No, I can't agree with you. Certainly, if you are to start at line 6 we would have to indicate the answer that appears on lines 1, 2, 3, 4 and 5, where he distinctly places himself in the position of an association with the government.

MR. EDELBAUM: I am sorry. Your Honor is quite correct.

THE COURT: Now, what line on 36?

MR. MC GUIRE: To fix the incident in point of time, 936, line 10.

MR. EDELBAUM: I will go along with it, down to line 17.

MR. MC GUIRE: Well, I would suggest down through line 21 on 937.

Then there are a couple of questions which are unrelated entirely to the subject.

I think we can now skip to 940.

THE COURT: Do you suggest anything on page 938?

MR. MC GUIRE: 938 is the beginning of Goldberg's recross examination.

MR. EDELBAUM: Starting at line 15 should be there, the rest of that page.

MR. MC GUIRE: I respectfully disagree with Mr. Edelbaum.

I think Mr. Goldberg's first question and answer are germane and the other questions and answers in Mr. Goldberg's recross examination are not.

THE COURT: Where are you now? Are you on 938?

MR. MC GUIRE: 938.

THE COURT: Do you have 938?

MR. EDELBAUM: Yes.

THE COURT: Now let's start at the beginning. Where are you now? Are you on 938?

MR. MC GUIRE: 938. I think the first question by Mr. Goldberg and the answer thereto, that is, lines 16 through 19, are germane, and the rest of Mr.

Goldberg's recross examination is not.

THE COURT: You mean by that you want 20, 21 and 22 omitted?

MR. MC GUIRE: Yes, sir.

MR. GOLDBERG: I have no objection.

MR. EDELBAUM: I have no objection.

THE COURT: Are we agreed on 20 to 25 on 938?

MR. EDELBAUM: That is out, you mean?

MR. GOLDBERG: Yes.

MR. EDELBAUM: WE are agreed on that, if that is what the question was. And then we go to 939.

MR. MC GUIRE: All of 939 is out, I w uld respectfully suggest.

MR. EDELBAUM: Yes, I would agree.

MR.MC GUIRE: And then Mr. Edelbaum's recross beginning on page 940 through the end of 941.

MR. GOLDBERG: It should start at line 11, your Honor. We shouldn't get into the Ostrer-Hellerman confusion, the first 11 lines.

MR. EDELBAUM: That is when I was a little bit groggy, Judge, We start at line 11, Judge, on page 940.

THE COURT: Do you agree, Mr. Mc Guire?

MR. MC GUIRE: Yes.

THE COURT: Because that talks about the time, doesn't it?

MR. MC GUIRE: Yes.

MR.EDELBAUM: All of 941.

MR. MC GUIRE: Then 942 is not germane and 943 is not germane, until we get to line 13, and there as to lines 13 through 18 I have a question. They refer to the agreement in writing which was made in October of 1972.

THE COURT: Well, based on the questions I interpreted -- and I don't have a divining rod -- I would say this is not relevant.

And, again, I think when I ask them if this complies with their request, having read to them those portions of the transcript upon which we obtain agreement, we will get some indication.

MR. GOLDBERG: I think there are a couple of page references in which he specifically says the month of the year. The questions Mr. Mc Guire gives us show June 1st and then back eight months before then.

THE COURT: Do you know where those pages are? Let's settle this. Lines 13 to the very bottom of the page on page 943 is out?

MR. EDELBAUM: Yes, that is all right with me.

MR. MC GUIRE: Before we go some place else, can we solidify our record on these pages?

THE COURT: Yes.

MR. EDELBAUM: We have not ended the pages; we have not ended agreement on the pages, Mr. Mc Guire. There are other pages that we want to discuss.

THE COURT: Let's finish.

MR. MC GUIRE: I have 936, line 10 through 937, line 21.

MR. EDELBAUM: Yes.

MR. MC GUIRE: 938 line 16 through line 19.

MR. EDELBAUM: Right.

MR. MC GUIRE: 940 line 11 through 941, line 13.

MR. EDELBAUM: Right.

MR. MC GUIRE: And that is all so far.

MR. GOLDBERG: Let me give this as a suggestion, your Honor. Let me look at 877 for a moment. 877, line 14.

MR. MC GUIRE: Through 879 line 9.

MR. GOLDBERG: To the bottom of the page, down to line 9 on 879, in which he specifies late 1970 or early 1971.

MR. MC GUIRE: Yes, I agree, 877, lines 14 through 879, line 8.

MR. EDELBAUM: We have the commencement but not the termination.

THE COURT: I think you do have a termination, but I'mnot going to include my opinion.

MR. MC GUIRE: Your Honor, I have found one other page which may be germane. I am thinking of page 655, line 6 through 11.

MR. GOLDBERG: Have you come across an entry in which he says he would be willing and ready to testify in any future cases?

THE COURT: Let us concentrate on 655.

MR. EDELBAUM: What line?

MR. MC GUIRE: Lines 6 through 11, actually 6 through 13.

MR. EDELBAUM: I have no problem with that, I would agree.

THE COURT: What is it?

MR. MC GUIRE: I think 13 is the proper line.

MR. EDELBAUM: I would agree.

MR. MC GUIRE: 655, line 6 through 13.

THE COURT: Have you found your page, Mr. Goldbe

MR. GOLDBERG: Not as yet, your Honor. Could you bear with us just a couple of more minutes.

THE COURT: Can you tell us what you think ? Perhaps Mr. Mc Guire or we can help you.

MR. GOLDBERG: There is a statement Mr. Panzer found in which Hellerman said that he agrees to remain available as a witness for the government when he is needed in any other cases.

MR. MC GUIRE: I don't recall that precise language, but I recall a good deal of testimony.

MR. PANZER: I have it. It is 867. It starts on 866, line 25, and it goes to 867, line 8.

MR. MC GUIRE: Your Honor, this comes to the other area in which I thought the Court had indicated that we were not going to tread, and that is the area of agreement between Hellerman and the government in 1972. There is a good deal of testimony on that subject.

THE COURT: Do you insist on those very few questions?

MR.GOLDBERG: May I consult?

THE COURT: Sure.

MR. EDELBAUM: We will withdraw that.

MR. GOLDBERG: Withdrawn, your Honor.

THE COURT: Do we have our understanding now?

MR. EDELBAUM: Yes, providing you ask the jury if there is any other information they think they need with respect to this question.

THE COURT: Mr. Mc Guire, is there anything else on this subject?

MR. MC GUIRE: Nothing that I want to suggest, your Honor.

Your Honor has indicated that it is the Court's plan to excuse the jury for the day today at 7 o'clock. Might I suggest that at least before doing that a delicate inquiry be made as to whether they think they are close to having a decision?

THE COURT: You know, I have a feeling, Mr. Mc Guire -- I don't know whether impressions mean anything after 21 years -- that if this jury has anything to say we will be the first to hear it, because they have shown no inhibition about writing notes, they come out in almost machine gun fashion, one, two, three, four, and when I say 7 o'clock, I am going to let them have dinner, I think, in their hotel. So that is another hour and a half.

So, actually, the evening is gone.

MR. MC GUIRE: I didn't mean to suggest anything, except that if they are close to an agreement with an extra half hour's deliberation or something like that .

(At 6 o'clock the jury took its place in the jury box.)

THE COURT: Ladies and gentlemen, I hope we have been able to come to grips with your question that wa reserved when we responded to your others, and I will read it once again:

"May we have the date Mr. Hellerman became a government agent and when he stopped."

I hope that the reading of the transcript satisfies you and complies with your request. If it doesn't, please indicate that.

(Testimony read.)

THE COURT: Does that comply with your request?

THE FOREMAN: Yes.

THE COURT: Would you like to know the plans for the remainder of the evening?

THE FOREMAN: If there are any plans. All I know is we got to work.

THE COURT: What I thought was that at approximately 7 o'clock I would excuse you for the day and you would then have your dinner, unless you indicate to this Court that you would prefer to remain, and unless I hear that from you I will follow my plan and you will resume again tomorrow at 9 o'clock.

How does that sound?

THE FOREMAN: Can we take a head count? I don't know. For my part I will stay until 10 o'clock

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77-2103

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

LOUIS OSTRER,

Petitioner, Appellant

-against-

UNITED STATES OF AMERICA,

Respondent-Appellee.

On Appeal From the United States District Court
For The Southern District of New York.

Appendix to Brief of the Petitioner, Appellant
Volume III

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TABLE OF CONTENTS

VOLUME III

Portions of transcript of evidentiary hearing on motion for new trial, United States v. Ostrer, 77 Civ. 1805 (CLB) (April 18, May 10, 11, 12 and 31, 1977)--1247

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

v. : 77 Civ. 1805 (CLB)

LOUIS OSTRER, :

Defendant. :

- - - - - - - - - - - - - - - - - - -x

Before:

HON. CHARLES L. BRIEANT, JR.,
District Judge

New York, New York
April 18, 1977
10:00 a.m.

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,
United States Attorney
Southern District of New York
LAWRENCE PEDOWITZ, Esq.,
GREGORY DISKANT, Esq.,
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Attorneys for Defendant

THE COURT: Counsel may proceed.

MR. SILVERGLATE: Thank you, your Honor.

May it please the Court, Mr. Ostrer is here this morning, the government having noticed his surrender -- his surrender is supposed to be this morning -- and Mr. Ostrer has filed rather hastily last week, with some additions this morning, which have been served on Mr.Pedowitz, some papers relating to two areas, with a request for bail on each of them.

This is quite separate from, distinct from the pending motion which I call the Pollack information motion, that's related to the Sixth Amendment wiretap taint issue, and our attempt to get a reopening of the evidentiary hearing on that matter.

I'll address myself this morning mainly to the issue that arises out of Michael Hellerman's book, or the issues that arise out of Michael Hellerman's book, and I can, if your Honor wishes, touch briefly on the issue,sort of up from the grave, if you will, of the incompetent juror which now becomes a bit more complicated than merely an incompetent juror issue; it also involves evidence from outside of the trial and outside the jury room entering into the deliberations of at least one juror, possibly others.

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In any event, your Honor -

THE COURT: Am I correct that that juror issue was resolved once in the last proceedings? We had an employment record here, if I remember correctly.

MR. SILVERGLATE: It was resolved insofar as the state of the evidence in the record at that point was concerned.

THE COURT: And you went up on appeal on that?

MR. SILVERGLATE: No. It was appealed to the Court of Appeals before your Honor ever saw the issue.

THE COURT: I understand, but then you came back before me, and I do recall having a hearing on the other matter, and in the course of that hearing, I had the personnel record of the juror before the Court, and it was a question about incompetency at that time, and I recall taking some evidence, and I believe I inspected the personnel record in camera and then allowed counsel to see it.

MR. SILVERGLATE: That is correct.

THE COURT: What happened after that? Was tha litigated?

MR. SILVERGLATE: That was not litigated fur because your Honor made it perfectly clear at that time and on the basis of the record at that point there was nothing new.

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THE COURT: It was contended that she was an inmate.

MR. SILVERGLATE: That's right. It was the argument about the hyphen, the omitted hyphen from the record. We argued she was a patient rather than a nurse's aide.

THE COURT: That turned out to be not true.

MR. SILVERGLATE: That turned out to be not true from the record that we had subpoenaed from the hospital, that your Honor had subpoenaed. That issue, that's why I say up from the grave, arises up from the dead because it's now back with some additional information.

THE COURT: How do you excuse not having had this additional information when I held the 2255 hearing before in this case?

MR. SILVERGLATE: Because, your Honor, we were unable a that point to find the juror's brother. We didn't even know at the time that the juror had a brother. Remember, Judge Edelstein had issued an order that we could not interview the juror herself directly or indirectly. So we were significantly handicapped in our investigation because we couldn't get near her without risking contempt of Court citation. So that we had to go about it very indirectly.

In any event, if your Honor please, I would like to start with the issue of the Hellerman book, it's a more complicated, time-consuming issue, unless your Honor prefers a different order of argument.

THE COURT: You will have to understand that I have not had the opportunity since you filed on Friday to read all of the Hellerman book.

MR. SILVERGLATE: I don't blame your Honor.

THE COURT: I have been engaged in other matters including a Federal Judicial Center Seminar which occupied the entire day Friday and Saturday, and I have not read it completely. I did read part of it, but not enough of it.

MR. SILVERGLATE: I am prepared, your Honor, to outline the highlights of the book or at least portions of the book that Mr. Ostrer considers highly relevant to this case, and I have attempted in my two affidavits, your Honor, to pick those parts out, discuss them, and compare them in some instances with portions of the trial transcript, or with portions of pretrial motions which, when all taken together, give us a basis for saying that Mr. Ostrer did not receive a fair trial.

This is, your Honor, the third time, the third time that Mr. Ostrer comes back to court with a major, what we consider to be a major attack, and certainly none of the prior attacks have been considered frivolous, attack on this conviction. Each time the attack has been on the basis of something that was learned by defense counsel that was wholly and totally unsolicited, totally and wholly unknown.

The first issue arose out of a juror writing a letter several days after the verdict to one of the defendants. That was the incompetent-juror issue.

The second issue arose out of Mr. Ostrer learning and informing the defense counsel after his trial that he was the subject of an unlawful -- under the Fourth Amendment -- surveillance, and we then learned that the were Sixth Amendment problems as well.

This issue, your Honor, this whole case is somewhat out of a Damon Runyon novel. Days before, that's a little before, a couple of weeks before Mr. Ostrer was destined or scheduled to surrender finally, as the government I'm sure would point out, to the U. S. Marshal, Mr. Ostrer calls counsel up and informs him about a book that he heard Michael Hellerman had written that had not yet been published.

Fortunately, we got a copy of a prepublication edition of the book and were able to go through it, not with the kind of care we would have liked.

We have not gone through the book versus the transcript with the kind of care we would like. We had hoped to have the assistance of Maurice Edelbaum, who was Mr. Ostrer's trial counsel, to help us in this task of analysis and to help us determine to what extent some of this material would have really been of very substantial benefit to Mr. Edelbaum in his ability to defend Mr. Ostrer and to cross-examine Mr. Hellerman, but unfortunately, your Honor, Mr. Edelbaum, who recently got back from a vacation, unfortunately suffered a very serious personal tragedy a couple of days ago, his son died, and he has been unable to sit down with us for obvious reasons.

He indicates that he hopes to do so within a couple of weeks but right now we are unaided by his very valuable assistance.

Now, your Honor, I am sure the government is going to say that it's been four years. However, if the allegations, if only part of the allegations in Hellerman's book are true, or if only part of them had been testified to before the jury, whether the government believes they are true or not, it is quite possible, if not probable, that the verdict in this case could have been altered.

I am not saying that is the standard that we should be held to. I am only saying that this is a case which touches very directly on the question of guilt versus innocence. Mr. Hellerman's book is very interesting on the issue of guilt versus innocence.

On the one hand, he manages to say at various points that Ostrer was greedy and was a crook, and was in on this with him. On the other hand, there are some very interesting things where he discusses Mr. Ostrer. At one point he refers to Mr. Ostrer. In the next breath he talks about finding other pigeons to buy the stock.

In other words, he is putting Ostrer, at that point, in the category of a pigeon. I have the page numbers where this appears in my affidavit.

At another point, your Honor, Mr. Hellerman says that when the deal began to go sour, he decided that he would get his friends out of the stock, bust them out, have them sell their stock at a profit, leaving the suckers holding the bag.

Mr. Ostrer was not among the friends who Mr. Hellerman got out.

THE COURT: The question is whether he was among the co-conspirators, isn't it?

MR. SILVERGLATE: I understand, your Honor, but it would have been very important obviously for the jurors to learn that Mr. Hellerman made an attempt and did in fact get his friends out, and that Ostrer --

THE COURT: That is in the trial record, isn't it, that some of them got out?

MR. SILVERGLATE: That some got out. What I am saying, your Honor, is that it was not by chance that Mr. Ostrer missed the boat getting out, it was because Hellerman decided to get his friends out and leave the pigeons in.

Obviously, if Hellerman,if at the trial he portrayed Ostrer as a pigeon, which is his word, rather than as a co-conspirator, the government had no case.

What I am suggesting is that this is very important impeachment evidence, impeachment evidence of a major, the major government witness, is obviously very important exculpatory evidence with which Mr. Edelbaum would have had, in Mr. Edelbaum's words, a field day.

I would point out, your Honor, that according to the book, and this is all we have to go on right now, according to the book, the government had a role in the production of this book. Obviously defense counsel did not.

THE COURT: I really find that astounding. I read your affidavit this morning, the one you filed on Friday afternoon, where you say that the U. S. Attorney's

Office encouraged him to write the book.

MR. SILVERGLATE: That's in the preface, in the foreword. Thomas Renner, who is a writer who likes to write on subjects like this, he is a co-author with Hellerman -- obviously Hellerman supplied the information and Renner --

THE COURT: Was encouraged to write it by a member of the U. S. Attorney's Office?

MR. SILVERGLATE: According to the foreword, Hellerman -- well, let me start from the beginning.

There was a dinner, a testimonial dinner to Mr. Partington, who was a Deputy U. S. Marshal in charge of the U. S. Witness Protection Program.

According to the preface in the book, at that dinner, an Assistant U. S. Attorney -- he is described only as "a smiling young lawyer," Assistant U. S. Attorney and the prosecutor --

THE COURT: That smile must be from foolishness.

MR. SILVERGLATE: Probably so, your Honor, but nevertheless - -

THE COURT: Too much Scotch?

It's really irrelevant, Mr. Silverglate, but I really find it rather astonishing. It is not relevant to your instant motion. The book is here, and the Court must read the book.

MR. SILVERGLATE: Part of it is relevant, your Honor, and this is the reason. No. 1, if somebody from the government knew that this book was being written and had some hand in it and kept track of the project, you could think that that person at least would have known some of the things that were said in the book much earlier than that. We couldhave learned that if that person had come forward with this information. We couldhave learned about it much earlier. The book started in 1974. We have been through a lot --

THE COURT: Is that documented?

MR. SILVERGLATE: Documented in the preface. There is only a five-- it is a short preface, your Honor. I urge your Honor to look at it.

THE COURT: I have, but I don't remember that fact being in the preface.

MR. SILVERGLATE: The other reason it is relevant, your Honor, is because if we take the preface at its face, we have to assume that the government supplied information to the authors for the book and that the government got Mr. Renner together with Mr. Hellerman, because, remember, Mr. Hellerman was a prisoner at the time, he was in a safe house, a marshal's safe house, for a good part of the time the book was being written, and he was in the Witness Protection Program; so his identity had been changed. Without the marshal's getting them together there would not have been a book.

And at the end of the preface, the end of the foreword, Mr. Renner thanks the Assistant U. S. Attorneys who made the book possible, and that was in the plural, Assistant U. S. Attorneys. He thanked them for their encouragement and their assistance.

I don't know who they are, but I would certainly like to find out. I am sure --

THE COURT: Wouldn't be of any relevance, would it?

MR. SILVERGLATE: It might be of relevance, your Honor, insofar as any such prosecutor wouldhave had some obligation, it seems to me, to report to the defense some of the information which went into this book.

THE COURT: This was all postverdict, wasn't it?

MR. SILVERGLATE: The book was all postverdict, yes. It was started in 1974. We don't know when it was-- the earliest that we know--

THE COURT: Their Brady obligations exist as of the moment of the verdict, isn't that so?

MR. SILVERGLATE: And continuing; in this circuit they are continuing. The government admits that it has continuing Brady obligations. Besides, this case isn't over. I mean this case wasn't really over --

MR. PEDOWITZ: Your Honor, may I respond to that very briefly? We don't admit anything of the sort.

THE COURT: He is talking about your having made concessions in other cases. He is not talking about what you personally did.

Let Mr. Silverglate finish.

MR. SILVERGLATE: United States v. Rosner is very clear on that point, the government's continuing Brady obligations, and besides the government in this very case at the trial, pretrial, when the defense counsel made a request for 3500 material, the government filed a memorandum by Assistant U. S. Attorney McGuire stating that at this point the government didn't know if Mr. Hellerman was going to be a witness or not, and that therefore they had nothing to give defense counsel at that point.

Now it is quite clear, if one believes the book, it is quite clear that the government knew full well at that point that Hellerman was going to be a defense witness and it in fact misled the Court and misled defense counsel.

In any event, your Honor, moving on from the government's role in this book--I don't say the government is happy about the book now --

THE COURT: Don't worry about their happiness. That is not a matter of concern to you or to me.

MR. SILVERGLATE: I would like to just outline briefly, your Honor, some of the incidents reported in the book which Mr. Ostrer feels, will argue, will have a devastating effect on the ability of this verdict to stand.

One of the most --

THE COURT: You are assuming, are you not, that the Agurs doctrine is retroactive?

MR. SILVERGLATE: Not necessarily, your Honor. I have thought about all --

THE COURT: I think you ought to take a position on it and you ought to let the Court know exactly, each of you, when your turn comes also, Mr. Pedowitz, what standard you believe the Court is now required to apply in this particular case in view of the Agurs decision.

MR. SILVERGLATE: Your Honor, if your Honor please, I would like to, just because of the fact that these affidavits were filed so late and the book is so long, I would like to outline some facts.

THE COURT: That is not my fault, you know. I can't help the timing of this matter at all.

MR. SILVERGLATE: Unfortunately, neither could we, your Honor. We did it as quickly as we could. We only had this a couple of weeks ago. But Mr. Dershowitz is prepared to argue the issue of the standard.

I have done most --

THE COURT: Can't you just tell me in one sentence what your position is?

MR. SILVERGLATE: Our position is that under any standard, the most restrictive standard that the government could possibly argue, this information rises to the level that requires a new trial; under any of the three Agurs standards, under any standards set forth by the circuit here pre- or post-Agurs. That's how serious this material is.

I think we have to start with the material because if in fact your Honor agrees that it is likely, and I guess that is what we are here for --

THE COURT: Very briefly, because I will have to read it for myself. There is no use trying to take the book secondhand. So go through the book very briefly.

MR. SILVERGLATE: OK, your Honor, these are just the highlights.

There was a swindle which was engineered by Mr. Hellerman while he was a government informer, by the way. This was prior to the Belmont trial. It involved taking over a company called Natco. It was going to be a bankruptcy fraud. The idea was that Hallerman and his cohorts would buy up the company. They would control it and own it fully. They would order a huge amount of inventory from suppliers. They would sell that inventory. They would bleed the cash out of the company and never pay the bills for the items they purchased. Then they would declare bankruptcy, leaving the creditors holding the bag; they would have had their money long since.

Mr. Hellerman did in fact bleed most of the money out of Natco, but the deal started to go sour, and there was still $80,000 left in the company's account. A check was drawn but it had to be -- Hellerman says it had to be cashed or deposited somewhere, and he finally decided after several attempts to cash it with gambling casinos unsuccessfully, finally decided to send somebody to the Bahamas to cash it.

Well, it was deposited in the Bahamas but then when it came time to withdraw the deposit, he had trouble, and here's what he says happened.

He sent two of his cohorts to the Bahamas to try to withdraw the $80,000. Hellerman says he needed the money desperately to pay his lawyers because he was having-- was in the midst of criminal troubles himself, and he was negotiating on a continuing basis with the U. S. Attorney for a deal.

He also needed money because his life was being threatened, he said, by loan sharks from whom he had borrowed money to finance the Natco swindle, among others.

He sent two people to the Bahamas in order to cash the check, to withdraw the money from the check. The people, the two cohorts who arrived at the Bahamas, got wind of the fact that the FBI had put a freeze on the account and were waiting to pick up whoever it was who came to withdraw the money.

So they came back to the United States and reported to Hellerman that they could not withdraw the $80,000.

Hellerman then says that Assistant United States Attorney and then head of the Criminal Division, Morvillo, arranged to have the money not only withdrawn but when Hellerman returned to this country from a voyage that he had taken, the money was waiting for him; he took the $80,000, and he paid some to his lawyer, some to the loan sharks, some of it is unaccounted for in the book; I assume he pocketed some of it.

Now that is very serious and this was not disclosed by Hellerman or the government at trial. That is a very serious thing, your Honor. Not only does this incident indicate that the government had made it possible for Hellerman to get $80,000 which was the money that belonged to the victims of a swindle of his, but which was a fraud on the bankruptcy court, I assume -- I am no bankruptcy expert, but I am quite sure that money should have been left to the bankrupt estate for distribution to creditors rather than given to the man who swindled these people out of the money.

But in addition to all of that, the government proved to Hellerman that it was willing and able to assist him financially when it was necessary to save his life from the loan sharks that Hellerman claimed were threatening his life.

All of this motive on Hellerman's part for testifying, all of this, this rather large favor that was done for him was not disclosed, was not revealed.

Now there was an agreement, your Honor, as your Honor might recall, there was a written agreement between Hellerman and the government. I think it is considered to be the first such agreement between a witness who turns and the prosecutor.

THE COURT: D'Onofrio had one.

MR. SILVERGLATE: Was it prior to Belmont?

THE COURT: I think so. His contained ultra vires provisions.

Go ahead.

MR. SILVERGLATE: There was a written agreement, your Honor. I have filed a copy of it for the Court's convenience. It is appended to my supplementary affidavit filed this morning. You see nothing in that agreement on this point, and when Hellerman testified -- this is critical -- when Hellerman testified at trial, he said that in sum and substance, all of the promises made to him and the favors that were promised and so forth were in that agreement.

He was not promised anything, nothing was done for him that was not in that agreement.

And I stress that all this was prior to -- the $80,000 was given him prior to his testimony.

The second point that's very important, your Honor, is that Hellerman shortly before he was due to surrender to the U. S. Marshal to begin serving his two-year sentence, which he had gotten upon his plea of guilty, he decided to take a trip to Europe, and particularly to Switzerland. He arrived at the airport, I assume it was Kennedy Airport, in New York, and found New York City policemen were there with an arrest warrant waiting for him and refused to let him out of the country.

No. 1, it is interesting --

THE COURT: This was not after the trial?

MR. SILVERLGATE: This was not after the trial. This was before the trial. In fact, first of all, he managed to get his passport back because he had surrendered his passport as a condition of bail-- he managed to get his passport somehow from the probation office. We assume the government must have known he had gotten the passport back because he had to get it from the government.

Secondly, the police would not let him leave the country because they said they suspected that he had on him $250,000 in cash, the proceeds of a swindle.

THE COURT: This is New York City police?

MR. SILVERGLATE: New York City police.

It was the victims of the $250,000 swindle who got the police to greet Hellerman at the airport and keep him from leaving.

Hellerman said that he tried desperately to get hold of his attorney, Broderick, to get Broderick to help him convince the police to let him leave. Broderick was unavailable. He said he then called Morvillo for help, which is interesting because Morvillo must have known something about the trip, at least. He said Morvillo was not around, he couldn't reach him. He finally got the FBI to call the New York police, and the FBI agents arranged for Hellerman to leave the country.

Now I filed an affidavit of Martin Roth, your Honor, which indicates that the trip to Switzerland, the reason Switzerland was on the travel agenda, was because Hellerman deposited in a Swiss account at least $300,000, the proceeds of various swindles which --

THE COURT: The man does not need to write a book, does he?

MR. SILVERGLATE: Not for the money, your Honor.

THE COURT: No.

MR. SILVERGLATE: In fact, one wonders precisely why he did write it.

In any event, if you read the book, your Honor-- I think it probably will not make that much in royalties -- it is interesting to us but I don't think it will be a best seller.

So that's No. 2. This was prior to the Belmont trial. None of this came out.

The third major incident, your Honor, was that the $300,000 that was deposited in the Swiss account, is doubly interesting because when Mr. Hellerman was sentenced by Judge Lasker prior to his Belmont testimony, he had agreed, remember, in the written agreement with the government, to make $100,000 restitution to be distributed among victims of his swindles.

When it came time for his sentencing, in fact, days after, he says in the book,he signed the written agreement, he informed the U. S. Attorney he didn't have $100,000, he only had $12,500 left, and Judge Lasker, hearing that, imposed a restitution order of only $12,500.

Nevertheless, in the Belmont trial, Hellerman testified that he had already made restitution of $12,500 and he would make the balance of the $100,000 restitution "when I go out and get an honest job."

Actually, it is a paraphrase; something like "When I go out and get an honest job and work, I will earn the money and I will pay it back."

THE COURT: I can almost visualize the gesticulations of Mr. Edelbaum when that answer came out.

MR. SILVERGLATE: In fact, your Honor, Mr. Edelbaum had a bench conference immediately, your Honor is quite right, it provoked Mr. Edelbaum into a bench conference, at which Mr. Edelbaum questioned this and Mr. Hellerman assured the Court and counsel that this was true, that he had paid 12,5 and that he was going to make the rest of the restitution later.

The government, in addition, made a representation to the Court that Mr. Hellerman -- it was not the intention of Hellerman or his counsel to seek a reduction of sentence under Rule 35. Very, very shortly thereafter a Rule 35 motion was filed, was not opposed by the government, was granted by Judge Lasker.

Hellerman, who had served three days in jail, had his sentence reduced to time served. He had served three days in jail and several months in a safe house, had his sentence reduced to time served, and his probation, which had been supervised previously was now to be unsupervised.

THE COURT: I don't necessarily have to draw any conclusion from that particular aspect of it.

MR. SILVERGLATE: Well, concerning the $12,500 I think your Honor can draw some conclusions because it was -- if it is true the government knew that Hellerman was depositing money in a Swiss bank account, then it was very misleading for Hellerman to have said to the jurors, "All I have got is 12,5, I gave that, and I will pay the rest when I get a job and earn some money."

In any event, your Honor, the next major issue was as follows: Mr. Hellerman was advised to retain good counsel on his behalf, in fact I think he probably did rather well with his counsel. He picked the Nizer firm of which Mr. Vincent Broderick was at the time a partner. Broderick represented Hellerman, although Mr. Nizer participated and a couple of other attorneys, younger attorneys also participated.

The fee that Nizer was going to set, in fact did set, and Broderick, was $100,000. Hellerman says he couldn't afford that, so he said he went to Mr. Morvillo, and it is a little vague exactly what happened exactly when, but the gist of it, and your Honor will see it in the book, is that through Mr. Morvillo's good offices, the fee was cut in half, so that he only had a $50,000 fee to pay.

Now apparently he only paid part of that, your Honor. That is a very substantial -- and this happened before the Belmont trial -- that is a very substantial gift, very substantial assistance by the prosecution, and that is not mentioned, at least I have not been able to find it in the trial transcript.

THE COURT: That was not disclosed in the Brady material?

MR. SILVERGLATE: That was not disclosed, your Honor.

Another important point, your Honor, is the whole issue of Hellerman's confinement to jail. One sees in the trial that Hellerman testified to the jury that he was now serving in jail. He didn't even say serving a sentence. He specifically said "I am in jail now," when asked about what his plea bargain was about.

In point of fact, your Honor, it turns out that Mr. Hellerman's date of surrender was postponed until after Christmas of 1972, which was just before the Belmont trial started. He ended up spending three days in jail, whereupon he was taken out of the jail upon order of the Assistant U. S. Attorneys, he was taken to New York, and he was put into a safe house operated by the U. S. Marshals.

From the day he testified in the Belmont case, forever after Mr. Hellerman never saw a jail again, and yet because he had served three days in jail just before his testimony, he was able "honestly," and I put that in quotes, to tell the jurors that he was in jail. That is technically true but very misleading, your Honor.

Now, your Honor, I suppose the government can argue, well the government had intended at the time to return him to jail but changed its mind. That is belied by the book.

THE COURT: Don't get too deep in that point because I will have to read all of it anyway.

MR. SILVERGLATE: Can I just ask your Honor to note the portion of the book where Hellerman states that the Assistant U. S. Attorney Wing hinted to him, led him to believe, made it as clear as possible, I suppose, without coming out and saying it outright, that he would attempt to get Hellerman into a safe house rather than have him return to jail; and at one point he even says Wing came out and said he would do it although later Wing said he was not sure he could accomplish it, but he would still try.

THE COURT: You wanted him to testify at the trial that he had been promised he was going to go into a safe house?

MR. SILVERGLATE: He did not so testify.

THE COURT: I know he didn't, and if he had, there would have been a motion for a mistrial properly.

MR. SILVERGLATE: At least defense counsel shoul have been informed of that, and defense counsel could have decided if they wanted that to come out. In any event, what didn't come out was that Hellerman wanted to go to some place other than jail, and he was led by Mr. Wing to believe he would, and, in fact, there was never any intention, it was obvious there was never an intention to return him to jail after his testimony.

Those are just the major highlights, your Honor. I have listed in my affidavit a lot of other points, some of which make it reasonably clear that Ostrer was a victim of this swindle rather than a participant - conspirator in it.

THE COURT: Is it your position that there is anything set forth in this submission you are making today which requires an evidentiary hearing? And if so, would you tell me specifically what? And I am going to ask the same question of Mr. Pedowitz when he gets his opportunity to speak.

MR. SILVERGLATE: All right.

There is onepoint I should mention, your Honor.

THE COURT: You understand the question I have posed?

MR.SILVERGLATE: Yes. All of the points that I have mentioned, if the government concedes them, fine. I take it the government will at various points say --

THE COURT: They will claim he wrote a novel.

MR. SILVERGLATE: They will claim that he wrote a novel. They will claim that the government didn't know about some of these things, some of them are not true.

In any event, all of the incidents I mentioned just now require an evidentiary hearing in addition to the fact, and this is a very plain point, Hellerman says that he was paid $800 a month by the government in support payments; that he never mentioned. That was not in the written agreement. That was not testified to when he was asked about promises and favors.

He said they were all in the contract, whatever isn't in the contract didn't exist, and there are cases directly on point which we cite in the brief, your Honor, that payment to a witness of money, support payments, or whatever they are called, if not disclosed to the defense, require a new trial.

It is very clear Brady material. The only distinction between this case and in the cases cited, the witness was paid $1000 a month and Hellerman got $800. I doubt if $200 a month is a substantial enough difference to distinguish those cases.

The evidentiary hearing would have to focus on the $80,000 from the Natco bankruptcy fraud. We would want to find out who the New York City policemen were, what they told the FBI about their suspicions about the quarter of a million. We want to find out who authorized the FBI, first of all, whether the FBI, in fact,as Hellerman said they did, got him released from the airport so he could,go to Switzerland, and if the FBI did, we want to know who authorized the FBI to do so; whether it was an Assistant U. S. Attorney, in particular whether it was Mr. Morvillo, because Hellerman says he tried to call Morvillo but just could not reach him.

We want to find out about the trip to Switzerland, and perhaps want to subpoena airline records to prove, should Hellerman deny that he really went.

We are prepared to produce a witness, Mr. Roth, to whom Hellerman told that he went, and that he deposited the $300,000.

We would like to have a hearing on the issue of the reduction of the legal fee, to find out the full role that Mr. Morvillo played in that, and to find out why that was not disclosed to defense counsel.

We would like to find out from Mr. Morvillo, Mr. Wing, Mr. McGuire, and Mr. Broderick --

THE COURT: He was not a government official at that time.

MR. SILVERGLATE: Broderick was not, your Honor. He was a private lawyer. We would like to find out what deal -- we may not need Mr. Broderick actually. I know that he is a judge now. That makes me think twice, not that it should perhaps, but it does.

THE COURT: That is not the point. He was not a government official.

MR. SILVERGLATE: He was not a government official at the time.

We would like to find out whether the government in fact got the fee reduced or helped get the fee reduced, and why that was not disclosed.

We would like to find out about the reduction of sentence, whether Hellerman was given to believe that on a Rule 35 motion the government would take no position in opposition.

It certainly seems strange coming so soon after the Belmont trial at which Mr. McGuire specifically stated that there was no intention by defense counsel to Hellerman or by Hellerman to make such a motion.

We would like, too, to find out what promises were made by Mr. Wing and others in the Justice Department, including Mr. Morvillo, to Hellerman, concerning what the conditions of his confinement would be or could be; whether he was promised he would be put into a safe house after his testimony or whether the government held this out as a carrot, holding out the local jails and the horrible conditions as the stick.

And, finally, your Honor, we would want to confront Mr. Hellerman with some of the language in his book where he describes Mr. Ostrer as another pigeon, where he says he got his friends out and didn't get Ostrer out.

We would like to examine him on that and find out whether if he were asked again in front of a jury, he would describe Mr. Ostrer in different terms than he described him at the trial.

There are a very limited number of witnesses that we would need, your Honor, because there are several witnesses who I think have information on all of these or most of these points. Certainly Mr. Morvillo would have to be there. Perhaps Mr. Schaeffer, who assisted Mr. McGuire, would probably want to be there, and Mr. Wing we would probably want. Mr. Hellerman we would want.

And, as I said, because of the importance of the Natco --

THE COURT: If Hellerman testified truthfully for you, that would be sufficient, wouldn't it? The rest of them would merely be cumulative.

MR.SILVERGLATE: Not necessarily.

THE COURT: Because it is Hellerman's state of mind that makes the relevance. If he thinks that Mr. Morvillo got his legal fee reduced, that is just as good as if he actually did.

MR. SILVERGLATE: It certainly is, since he would have to tell that to the jury and the jury would then understand, the jury could believe it or not believe it. And as your Honor pointed out in your Honor's opinion on the Sixth Amendment taint issue, Hellerman really was the government's case, and as your Honor pointed out in the opinion, the jury in order to convict -- as your Honor pointed out, Hellerman was the key government witness and the jury in order to convict had to believe Hellerman, and I think that's the standard here, simply had to believe Hellerman, and this evidence is really -- pardon the expression -- dynamite with respect to Hellerman's credibility.

We are prepared, your Honor, to go ahead on a hearing immediately. We have the book, we have the transcript, we have an idea of who the witnesses will be.- - I just listed them for your Honor -- we are prepared to go ahead immediately.

If that means tomorrow, we are ready tomorrow. If it means the next day, the next day --

THE COURT: You all know that I can't hear it tomorrow so that is kind of an extravagant suggestion.

MR. SILVERGLATE: I was not aware that your Honor could not.

THE COURT: All right.

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I was not even expecting to hear you today, which you can tell from the fact that I am fully booked.

MR. SILVERGLATE: Incidentally, your Honor, I very much appreciate the fact that your Honor put this on today rather than Friday.

THE COURT: Let's not go into that. I want to hear --

MR. SILVERGLATE: In view of the amount of time I have taken on the factual issue, I don't know if your Honor wants to hear my argument on the legal standards or on the cases that I think require a new trial here.

THE COURT: I don't think that would be helpful at this time. There will come a point where it will be very important to sift out after Agurs how much of it is dictum and how much of it is retrospective, and that is important, but I don't think we need to do that today, and I think it is premature unless we know what the facts are to go talking about the legal aspects. It would not be very rewarding at this time.

MR. SILVERGLATE: We are working on that memo already. We figured that would be an issue.

THE COURT: All right.

MR. SILVERGLATE: Your Honor, I would at this point like to stop my argument and hear what the government has to say.

THE COURT: So would I.

MR. SILVERGLATE: And ask for a rebuttal if there is anything for me to say afterward.

THE COURT: All right.

Mr. Pedowitz.

MR. PEDOWITZ: Your Honor, Mr. Diskant is going to cover all of the Hellerman aspects.

I just wanted to touch upon what Mr. Silverglate has characterized as the Pollack information because they are also moving for bail in connection with that application.

I think your Honor now has all of the facts in connection with the Pollack information. The defense has filed an additional affidavit as of Friday of Mr. Pollack, his fourth affidavit, and he has moved for leave to file that affidavit, even though it is coming in late.

If your Honor is inclined to grant that motion. I would ask leave of the Court to permit me to file two additional affidavits, one of Mr. Seidemann and one of Mr. McGuire.

THE COURT: I think you should, although the main focus right now is on this Hellerman book. But I think you must make your record complete on that score.

I will take their late affidavit on the Pollack claim and I will permit you an opportunity to file yours.

What is it you want to file, again?

MR. PEDOWITZ: It is an affidavit firstly of Mr. McGuire in which he repeats the statements which he made in a letter which was sent to you, your Honor.

THE COURT: Didn't he already send that in? Don't we have something?

MR. PEDOWITZ: Yes, he sent a letter, but not an affidavit.

THE COURT: All right.

MR. PEDOWITZ: The essence of his statement is to the effect that he had no information -- he was provided no information from any source aside from the SEC and from the government's own internal files. He received no information from the IRS --

THE COURT: Let's look at the Hellerman book. That is the thing we are here really to go into.

MR. PEDOWITZ: Mr. Diskant is going to go into it.

THE COURT: I will take the affidavits. You said one was Mr. McGuire and who was the other?

MR. PEDOWITZ: The other was a Mr. Seidemann. I had not received them because today to get here by 9:30 --

THE COURT: All right.

MR. DISKANT: Your Honor, preliminarily the government views these Hellerman motions and the juror motion, as well, as 2255 applications rather than motions for a new trial.

THE COURT: I guess they do also. I don't think that is in dispute, is it?

MR. DISKANT: I believe with respect to the juror, they suggest in the alternative --

MR. DERSHOWITZ: Your Honor, just one --

THE COURT: You are a little late for a new trial motion.

MR. DERSHOWITZ: Our position is this, and I thought I made it clear in a conversation with your law clerk when I was asked that precise question. Our position is when the two-year period has expired and the defense has come upon new evidence, which it was late to come upon because of government withholding of information in their possession, if we can establish that, then the standards of a new trial motion apply rather than the standards of 2255, and we will submit a memorandum.

THE COURT: It is still a 2255 proceeding, isn't it?

MR. DERSHOWITZ: It may be in form a 2255 proceeding but in substance, it is our argument, we will submit a memo on this, the standards of Rule 35 apply as to bail and as to the relevance for the new trial motion.

THE COURT: If you talk about standards, there is a different question. But if you want to talk about procedural aspects of it, I regard this entire matter this morning as being pursuant to Title 28, Section 2255, and the other relevant sections.

And I don't know why that should really be an issue.

MR. DERSHOWITZ: It is not unless the government takes the position that that form determines the standard; we don't press it.

THE COURT: All right. Go ahead, Mr. Diskant.

MR. DISKANT: Thank you, your Honor.

THE COURT: Whether they take that position or not, that is a whole different question. I regard the Court as sitting here pursuant to Title 28, United States Code.

Go ahead.

MR. DISKANT: We do as well, your Honor.

Secondly, we do intend to respond formally with affidavits and memoranda of law to the claims that are raised here but we --

THE COURT: When will you be doing that?

MR. DISKANT: We request that before we be required to do so, the movant finalize his claims. The affidavits that are submitted suggest that more affidavits are to come from Mr. Edelbaum, from Mr. Silverglate; there are references to not having fully analyzed the book, having fully analyzed --

THE COURT: The book is before the Court, isn't that so?

MR. DISKANT: That is correct.

THE COURT: Anything they do by way of analyzing the book will be by way of a brief or memorandum of facts.

MR. DISKANT: We would prefer to have all their claims out before us before we are required to respond.

THE COURT: Now that will be dilatory, Mr. Diskant.

When will I have all your papers, Mr. Silverglate?

MR. SILVERGLATE: Mr. Edelbaum --

THE COURT: What is he supposed to tell me?

MR. SILVERGLATE: Mr. Edelbaum would simply verify for your Honor that these things were not told to him, the things that are the important points that I am picking out of the book.

THE COURT: Mr. Edelbaum does not have to prove a negative. What was told to him will be borne out by the 3500 exhibits in the main trial, by the transcript in the main trial, and the usual letters which the prosecuto[illegible]ites to defense counsel telling him things or en[illegible] papers.

He does not have to prove a negative, so I am not going to defer anything for his affidavit.

MR. SILVERGLATE: All right.

THE COURT: I don't think you need it.

MR. SILVERGLATE: Fine, your Honor, the only other thing he was going to talk about is how he might have used some of this.

THE COURT: I will assume that if he gave us an affidavit, he would say he would make great use of it. You don't dispute that, do you, Mr. Diskant?

MR. DISKANT: No, your Honor.

THE COURT: He would not be worthy to be a member of the defense bar if he did not tell us that it was crucial, it was dynamite, and had he but known, he would have whispered to the jury about the worthlessness of this novelist or whatever he is.

MR. SILVERGLATE: The only other point that Mr. Edelbaum would discuss --

THE COURT: So I will regard it as stipulated for purposes of this hearing that Mr. Edelbaum, if called upon to do so, would testify that he wouldhave made great use of this material.

MR. SILVERGLATE: And also that hewas then present at the ex parte meeting at which the witness Hellerman infused all kinds of poison into the ear of the sentencing judge concerning Mr. Ostrer.

THE COURT: That won't give you a new trial, will it?

MR. SILVERGLATE: No, that is the issue of sentencing.

THE COURT: That is a different issue, all right.

MR. SILVERGLATE: In any event, your Honor, your Honor is quite right. I have spoken to Mr. McGuire on the phone this morning. He won't tell me anything at this point, at least until he reads the book, and perhaps even thereafter.

THE COURT: He is not the fellow who told Hellerman he ought to write it?

MR. SILVERGLATE: I don't know. I don't know.

THE COURT: All right, let Mr. Diskant finish his argument.

MR. PEDOWITZ: Your Honor, I resent very much, on behalf of Mr. McGuire, the constant references to his conduct.

First of all, Mr. Silverglate spoke with Mr. McGuire this morning concerning--

THE COURT: Mr. McGuire has no obligation to discuss anything with Mr. Silverglate.

MR. PEDOWITZ: But he did discuss this with Mr. Silverglate and Mr. Silverglate has not seen fit to point that out. Mr. McGuire pointed out, among other things, that he did not read this book despite the claim in a letter of Mr. Wynn that he did. He did not approve the manuscript. He never heard of this book until I mentioned it to him on Friday.

I think it is rather unseemly to claim that Mr. McGuire is a party or even to hint that he is a party to this book.

MR. SILVERGLATE: Your Honor, I reported to Mr. Pedowitz the full content of my conversation with Mr.McGuire.

THE COURT: What is the basis for saying Mr. McGuire reviewed the manuscript?

MR. SILVERGLATE: Mr. Wynn spoke with the attorney for Doubleday.

THE COURT: Who spoke to the attorney for Doubleday?

MR. SILVERGLATE: Richard Wynn of Mr. Ostrer's--he is local counsel for Mr. Ostrer. The reason he spoke to Doubleday was because Mr. Ostrer has threatened a lawsuit against Doubleday if this book is published.

THE COURT: What?

MR.SILVERGLATE: He has threatened a lawsuit against Doubleday because in the book Mr. Ostrer is called a swindler and various other things.

I think he may not be the only one who is upset about the book. The book is a double-edged sword. On the one hand, it may assist him in this case; on the other hand, the book is not all that complimentary.

Your Honor, in the course of that discussion, the attorney for Doubleday told Mr. Wynn that the publisher took the precaution of checking the book out with people in the prosecutor's office for accuracy,and Mr. Wynn said, "Does that include Mr. McGuire?"

And the lawyer said, "Yes."

Now Mr. McGuire obviously can defend himself. He can come defend himself.

THE COURT: I just want to know what your bais was for making that kind of charge against Mr. McGuire, that's all.

MR. SILVERGLATE: That is the basis.

THE COURT: Mr. Diskant, you may proceed.

MR. DISKANT: Thank you, your Honor.

Just to clarify, we stipulate to Mr. Edelbaum's testimony to the extent it turns out any allegations are true. Obviously -

THE COURT: That, of course, is a different question, but assuming they were true, and had he known about them, he would testify, and I guess any competent counsel would so testify.

MR. DISKANT: Thank you, your Honor.

THE COURT: So we don't have to waste time with useless uncontroverted matters.

MR. DISKANT: In any event, we will respond promptly. Our only concern is that --

THE COURT: You know I got a little bit off the track here. When will you have all your papers in, Mr. Silverglate?

MR. SILVERGLATE: Well, if your Honor would like a memorandum on the Agurs issue of standards --

THE COURT: Let's talk only about facts because the Agurs memorandum may take a little longer. When will you have all your affidavits on which you rely and all of your factual contentions on which you rely?

MR. SILVERGLATE: I would like to have a bit

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more time to go through the transcript and to --

THE COURT: Can't you tell me?

MR. SILVERGLATE: I would say if I couldhave a week, I would like a week.

THE COURT: Do you think you can have it by Monday morning?

MR. SILVERGLAGE: Certainly can, especially if it means that that is the only way that Mr. Ostrer can retain his liberty. I certainly will do it in two days if that is necessary. But I would like a week.

THE COURT: All right.

Now, how soon after that, Mr. Diskant, will you have your papers?

MR. DISKANT: We can respond a week after their final papers are in, which would be Monday, two weeks.

THE COURT: Can you perceive now that the Court is going to have to have an evidentiary hearing or at least we aregoing to have to take the testimony of Mr. Hellerman?

MR. DISKANT: We do not believe so yet, your Honor. We have not fully analyzed all the claims.

THE COURT: I haven't either, but it certainly seems that way to me.

MR. DISKANT: Perhaps I could review some of them for you, and you might see them in a somewhat different light.

Before we move to that, I just want to touch briefly on the renewed juror claim which I think, as your Honor correctly perceived, is being pursued in somewhat untimely manner at this time.

By Ostrer's affidavit from Richard Mulleen, his private investigator, they learned of the existence of Juror Rush in -- excuse me, the affidavit of John McNally-- in early 1976, at approximately the time before the evidentiary hearing was last held in this case, and we see no reason why Mr. Rush could not have been located at that

THE COURT: I assume they were prevented from getting hold of the brother by the fact that the Court, the Trial Court, had issued an order not to meddle with the jurors.

MR. DISKANT: That is correct, your Honor, and we believe that includes finding Mr. Rush.

It was our belief--

THE COURT: If the deposition - - you can't have it both ways, can you?

MR. DISKANT: No, your Honor, we are of the belief that Mr. Rush should not have been contacted at all. That was our understanding of Judge Edelstein's order.

However, if he was to be contacted, they did in fact learn of his existence in early 1976, and since they did see fit to pursue the matter, it could have been pursued at that time.

Mr. Rush is in the telephone book and could be readily located.

In any event, we consider his claims --

THE COURT: Let's talk about Hellerman's book.

MR. DISKANT: Very good, your Honor. I will pursue them in roughly the same order Mr. Silverglate did.

With reference first to the trip to Switzerland, this is not a claim that arises from Hellerman's book. Hellerman says he went to Switzerland. He says he was stopped at Customs by police who believed he was carrying a large amount of money. He was searched and found to be carrying only $2500. That is what the book says.

The claim that he was carrying more, the claim that he was carrying $300,000 comes by way of an affidavit of Martin Roth.

THE COURT: Did they intercede? Did the government intercede in his behalf as a result of his presence in the airport? Isn't that the point?

MR. DISKANT: The point, I believe, is the government took him or allowed him to go to Switzerland with $300,000.

The book does state that the FBI informed the local authorities that Mr. Hellerman had permission to travel to Europe, which he did.

His bail conditions were modified and we believe that there is a court order reflecting that fact, making it a public record. A matter of the government permitting a defendant accomplice witness an extension of bail conditions is, we believe, an essentially trivial matter so far as Brady is concerned, if it is Brady material at all.

In any case, there is no basis so far as we know other than the Roth affidavit for the claim that he smuggled illegally a large amount of money out of the country, and there is no basis as far as we know for the Roth affidavit to come forward at this time.

The affidavit itself is simply hearsay reporting a purported conversation with Mr. Hellerman, and it is an affidavit from a man who was convicted in a matter on information supplied by Mr. Hellerman and who has a great interest in discrediting Hellerman for his own purposes.

THE COURT: What are his purposes according to your view?

MR. DISKANT: For making a collateral attack as well.

THE COURT: Why is Roth interested in discrediting Hellerman?

MR. DISKANT: Because, your Honor, he was convicted, based on Hellerman's testimony, your Honor, and his interest in discrediting Hellerman, your Honor, in this proceeding for purposes of turning around and discrediting his testimony against him is obvious, we believe.

MR. SILVERGLATE: Your Honor, Hellerman did not testify against Roth. Roth pleaded guilty.

MR. DISKANT: Roth in his affidavit says he was retried before Judge Gagliardi and a jury beginning in November 1972, which trial resulted in a conviction coming a week or two before Christmas.

MR. SILVERGLATE: Hellerman didn't testify in that case, and in the second case, Roth pleaded guilty, so Roth is to no avail.

THE COURT: I can't rule on that today. I just wanted to understand the position counsel was urging.

Go ahead.

MR. DISKANT: Needless to say, your Honor, our investigation has been quite hurried.

THE COURT: I understand.

MR. DISKANT: And we are reporting preliminary matters to you.

In connection with the claim that the government failed to disclose matters relating to restitution, the judgment against Hellerman incorporated a requirement that he pay $12,500 in restitution, it was made in November of 1972 prior to the trial. It was a public record, and Hellerman testified that's what the judgment was.

He also testified that he intended to repay the $100,000 and we have no reason to believe --

THE COURT:. Is the fact that something is a public record relevant on your Brady obligation?

MR. DISKANT: Yes, it is, your Honor, because Brady concerns matter that is not --

THE COURT: See, I remember Seijo. I tried Seijo on a retrial and I think you could almost say without exception that every Brady reversal in this circuit where they pursued the people has resulted in a conviction on the second go-round, but in Seijo, the conviction complained of there was a prior conviction was a matter of public record.

MR. DISKANT: In any case, your Honor, the conviction was revealed by Hellerman at trial, if not before.

MR. PEDOWITZ: Your Honor, in Seijo, as you recall, of course, the matter was not a public record in this district but it was a matter of public record in Virginia.

THE COURT: Would that make a difference?

MR.PEDOWITZ: It is our position that it does.

In addition, here Mr. Hellerman testified, of course, that is exactly what the judgment was; and he mentioned a $12,500 as opposed to the $100,000.

THE COURT: When he told the jury he intended to pay the full $100,000, Mr. Edelbaum turned his eyes heavenward?

MR. DERSHOWITZ: Your Honor, we are going to be checking, as this goes on, to determine whether or not that is a matter of public reocrd.

THE COURT: I can't reach that issue today, Mr. Dershowitz.

MR. DERSHOWITZ: That is not the case.

THE COURT: I am trying to get the relative positions of the attorneys in this matter so I can schedule what to do next.

MR. DISKANT: With respect to the conditions of confinement of Mr. Hellerman, as your Honor correctly perceived, he did testify truthfully that he was in jail at the time he testified.

We have not fully completed our investigation as to where he was lodged throughout this time in federal custody, but the agreement with Hellerman, which was turned over prior to trial,does say that during such time as Michael Hellerman is in prison, the government will take such precautions as are necessary to secure his physical safety.

And we believe that that puts the defense on sufficient notice as to the fact that precautions will or might be taken. And if that is a matter that the defense seriously intended to pursue on cross-examination, which we think is unlikely, it could have been done.

With respect to the fee, the legal fee that Hellerman paid the Phillips Nizer firm, we understand from Mr.Morvillo, who has spoken with Mr. Broderick, that the fee was reduced upon the determination that Hellerman would cooperate and testify rather than go to trial, and quite obviously the fee for taking Hellerman to trial would have been substantially higher.

THE COURT: The question is: Did Mr. Morvillo speak to the Nizer firm and ask them to reduce it?

MR. DISKANT: We understand he did not.

THE COURT: Doesn't the book say he did?

MR. DISKANT: The book is unclear on the point.

THE COURT: I know the book is not under oath.

MR. DISKANT: Not only is it not under oath, but it is not clear what happened.

THE COURT: Nizer's motivation in reducing the fee is not relevant. The question is whether the government did a favor for the cooperating individual which they were bound to disclose.

MR. DISKANT: We understand from Mr. Morvillo that he did not but to -- let me just take one second, your Honor.

My best recollection of the passage is that Morvillo says or Hellerman reports that Morvillo says to him in effect that he would see if something could be done, or words to that effect; nothing more, and subsequently the fee is reduced.

There is no, by Hellerman's account, there is no direct evidence.

THE COURT: Movants could infer that it happened because of Morvillo's efforts, which apparently is the inference the author takes.

MR. DISKANT: In any case, we believe that Mr. Morvillo has told us that this is not what occurred, and Judge Broderick has corroborated that version.

We intend to submit affidavits from both gentlemen with respect to that point.

With respect to the claim that the government was providing Mr. Hellerman with $800 a month subsidy, the first response to that is that by Hellerman's own account, the money appears to have been paid after he was released from custody when he was simply a protected government witness in the Witness Protection Program, not at such time as he was in custody and testifying. The payments would have been, if they were made at all, subsequent to the testimony at this trial.

He says in the book -- the passage that the movants rely upon, "By this time my two-year sentence had been reduced to nine months by Judge Lasker, I was no longer a prisoner-witness, but a protected witness, whose family was being supported by federal funding until I completed my testimony in government cases. Subsistence provided $800 a month."

My reading of that is that the money was provided only afterhis release from custody. In any case, the government's agreement with Hellerman,again provided to defense prior to trial, says that at the time of Michael Hellerman's release from custody after serving the sentences imposed on his pleas of guilty, the government will assist Michael Hellerman and his family to relocate in some suitable location under conditions that will prevent persons outside the Department of Justice from learning where he is living.

The reasonable inference of that agreement is that the government will expend some funds to assist in that relocation, and to the extent any funds were either promised or provided at the time of trial, that is a matter that could easily have been disclosed by cross-examination based upon the government's agreement.

I believe I have touched on the high points of the attack on the book. There are attacks on Hellerman himself submitted through affidavits from Anthony DiLorenzo, Martin Roth, and Anthony Soldato, all of which we believe are untimely, hearsay, reporting hearsay conversations from witnesses or affiants who have motives of their own to discredit Hellerman, and to a large extent, even if some of the conversations reported were true, they would not discredit in any way Hellerman's trial testimony.

To some extent, the information was already provided to Ostrer; for instance, on one of the affiants' reports that Hellerman intended to buy a million dollar life insurance policy from Ostrer.

Ostrer surely knew of that. In fact,the trial record shows that Hellerman was cross-examined on the matter.

With respect to claims under the government's 3500 obligation, these claims are just utter speculation.

Hellerman reports he had conversations with various government attorneys, including John Wing, Robert Morvillo, and Harold McGuire.

3500 material generated by McGuire and Wing was turned over. There was no 3500 material from the conversations with Morvillo, and so far as we know, none was turned over.

Morvillo has told us there was none.

THE COURT: He can have the view that it does not necessarily result in 3500 material.

MR. DISKANT: Correct, your Honor. So long as no notes are taken, there is no 3500 material.

THE COURT: The difficulty is that the book, I gather, raises some questions, and because the book is not under oath, it may be necessary to take Hellerman's testimony on some of these points.

Do you see any way around doing that?

MR. DISKANT: Your Honor, first with respect to many of these claims, we do not believe the book raises any questions at all, and upon your Honor's reading of the matter, you will see that the fact that Hellerman, for instance, reports a conversation with an attorney is no reason to assume that 3500 material was therefore produced and not turned over.

THE COURT: On the other hand, if he testifies that notes were kept during that conference, then it does raise a question, doesn't it?

MR. DISKANT: That is not what he says in the book.

THE COURT: I know, but it certainly raises a query, doesn't it?

MR. DISKANT: We don't believe so, your Honor. Witnesses speak with many attorneys, and the government knows its 3500 obligation and turns over material generated by those conversations if there is any. The fact that Hellerman now says he talked to Morvillo is, first off, a fact that we doubt very much defendant was unaware of four years ago, but in any case, it does not seem to rise to any sort of showing that notes were kept.

Moreover, we believe it is something that can be answered fully by affidavits from the persons involved. There has been no showing whatever except sheer, unsupported speculation that there were --

THE COURT: Has anybody talked to Hellerman since this matter broke?

MR. DISKANT: The government has not, no.

MR. DERSHOWITZ: We don't know where he is, of course.

MR. SILVERGLATE: We don't even know his name now.

THE COURT: If Doubleday will give you the book, they will give you his name and address, and arrange for one of those parties where he autographs the first edition.

MR. DERSHOWITZ: We will be there.

THE COURT: You should be there.

I will take a brief recess at this time, gentlemen.

(Recess)

THE COURT: Mr. Diskant, you can continue.

MR. DISKANT: Your Honor, I don't believe we have very much to add. We do think that upon scrutiny of the claims, many, if not most of them,dissolve into nothing more than speculation and speculation that could have been proposed four years ago.

THE COURT: I don't know how you can say that about the book, because I made-- I looked at that particularly, and it stated without contradiction that they did not get the book until March 24, 1977.

MR. DISKANT: That is true, your Honor.

THE COURT: You don't dispute that?

MR. DISKANT: Oh,no, your Honor. But the kind of claims that are in it or the kind of claims that are purported to come from the book, in fact, are claims that could have come much, much earlier. For instance, the 3500 material claims.

At the time of the trial the defense knew that Hellerman had spoken to Morvillo because Morvillo -- it was Morvillo who signed the agreement with Hellerman. They knew that Hellerman had spoken to John Wing.

THE COURT: That is the only basis, they knew that Morvillo had signed the agreement?

MR. DISKANT: At a minimum that is how they knew. I believe there is an hour and a half colloquy in which Morvillo spoke with Judge Edelstein about Hellerman in front of defense counsel.

We have not searched the transcript for that as yet, but we don't believe there is any serious doubt that they knew that Morvillo had spoken to Hellerman.

They knew that John Wing had spoken to Hellerman because there is 3500 material from Wing that was turned over.

And they knew McGuire had spoken to Hellerman.

The book adds nothing except to say that

Hellerman agrees that he spoke to these gentlemen. That is not a basis for assuming the government failed in its 3500 obligation.

He does not say they took notes. He says nothing except that he had these meetings which are quite obvious that he had.

So it is our position that the book adds absolutely nothing to that.

With respect to the supposed smuggling of $300,000 to Switzerland, again the book says nothing about that. It says he didn't smuggle $300,000 to Switzerland.

THE COURT: But the book says he was eased or aided in his leaving the country by the efforts of someone either in the FBI or the U. S. Attorney's Office; isn't that what it is saying?

MR. DISKANT: It says that. I understand their primary claim to be that the U. S. Attorney's Office aided Hellerman to smuggle $300,000 out of the --

THE COURT: I don't understand that. Even if they aided him to get out when he was wrongfully accused of smuggling, that would be something that might constitute Brady material.

MR. DISKANT: It might, your Honor. We would certainly want to analyze the facts before we took a position.

We would certainly suggest that it was a harmless error, if it was an error, but it does not seem to us to be material to call for a hearing in any case.

We would suggest that with respect to whether a hearing is necessary be postponed until the affidavits and memos are in and your Honor has a chance to study them.

THE COURT: That is all right, but that type of approach -- I ought to give you a tentative date for a hearing because it is almost to be presumed that if any of these things in the book have any substance, there must be an evidentiary hearing because the book is not under oath.

MR. DISKANT: We have no objection to setting a tentative date, your Honor. We do think --

THE COURT: But I agree that the scope of the hearing and the actual necessity for it has to await a full submission. All of these papers were dumped on the Court within the last few days, some of them this morning, some on Friday not received by me until this morning, and I can't fault Mr. Ostrer or his attorneys for that, because it is stated without contradiction that they did not come into possession of the book until March 24th of this year.

It required some time to compare the book and read it and study it and find out what to do. So that I don't think they have been guilty of any laches between March 24th and the filing of the 2255 on April 1[illegible], and I think we had a prior filing of generalized papers prior to that.

MR. DISKANT: To the extent the claims are genuinely new and genuinely arise from the book, we have no objection to that, your Honor.

We would further suggest that the --

THE COURT: Do you really believe that an Assistant United States Attorney counseled this man to write the book?

MR. DISKANT: I have no knowledge of it at all, your Honor. We know that Assistant U. S. Attorney McGuire did not. Mr. Morvillo says he has no knowledge of the book. Perhaps some casual conversation somewhere, some Assistant may have said, "You ought to hear about Michael Hellerman" but I don't know of anything factually supporting that.

Lastly, with respect to Hellerman, the need for Hellerman's testimony, we would suggest your Honor also reserve decision on that as well. The objective-- we believe the standard should relate to the objective facts, not Hellerman's state of mind, in that the government can hardly be expected to turn over matters that Hellerman believes if the government does not know them. Therefore, the standard under Brady should be what the government knows about Hellerman, and its relations with Hellerman that it could thereafter turn over.

Whether Hellerman misperceived conversations and thought things were happening that were not happening is utterly irrelevant to the government's obligation to turn over exculpatory matter that it knows about.

THE COURT: Is there anything else?

MR. SILVERGLATE: Your Honor, I didn't hear Mr. Diskant touch upon the $80,000 and the Natco bankruptcy fraud.

I don't know if the government has a preliminary position on that.

THE COURT: I said he couldhave time. I don't think much is to be gained by further discussion of details until everyone knows where they stand and until all papers are fully submitted.

I think maybe I ought to give you a tentative date for which you would hold yourselves in readiness. I would like to suggest May 11th as a date, and I think that Mr. Hellerman ought to be placed on alert for that date so that he will be available,and I will just hear it that day.

If I don't conclude, I will continue it over to another date, not the following day.

If I conclude prior to that time that an evidentiary hearing is not necessary, I will so advise counsel and you won't need to bring Mr. Hellerman, but depending on the course his testimony takes, it may be necessary to hear Mr. Morvillo or Mr. Wing or conceivably Mr. McGuire.

I don't really plan to carry it much beyond there.

All right, is there anything further?

That will be 9:30 on May 11.

MR. DISKANT: The matter of bail, your Honor.

THE COURT: Have you all discussed the matter of bail with each other?

MR. SILVERGLATE: Yes.

MR. DISKANT: Indirectly, your Honor. We believe --

THE COURT: I will take a brief recess and I will talk with the attorneys inside.

(In the robing room)

THE COURT: Can all of you be statesmanlike and have a discussion on the subject of bail so the Court won't have to enter into it? The problem presents difficulties. I sometimes think that the question of bail in this case has been acquiring a life of its own apart from the issues. And I am really reluctant to let that happen. The continued dissension over the question of bail is causing several things to happen.

In the first place, I don't want to appear to present myself in a position of opposition to the Court of Appeals. I really ought not to be so regarded because the government has explicitly told the Court of Appeals that this Court would have the power on this motion, which every one up there seemed to realize was coming, to grant bail.

In the face of that statement, the Court of Appeals issued a statement for a mandate to issue forthwith.

The Court cannot evaluate papers that haven't been read, and it has been a physical impossibility with the timing here. The government itself has not read all these papers, nor has the Court.

The requests for one week have not been regarded as unreasonable by anybody, and I really would prefer to avoid dealing with the question of bail if an understanding could be reached among counsel which would avoid my having to do so.

I think it would be rather unjudicious for the Court to rule on bail without having read the papers and see whether you present in these motions anywhere a reasonable probability of success.

I don't want to get into any blanket declarations as to bail. If I grant any bail, it will only be to May 11th.

After the hearing on May 11th, I will see what the posture of the thing is. We run the risk that the judicial system is held up to public ridicule because a man is convicted of a serious crime and he remains out on bail so long, and the suggestion on the part of uninformed people is that this must be due to some lack of fortitude on the part of the courts or due to the superior capability of defendant's counsel or some other nefarious reason. I just don't buy that.

I would prefer not to have to resolve the question of bail, and really am unprepared to resolve it unless I read everything, so I think you ought to have a talk with each other.

If you want to talk in my absence, I will excuse myself and you can talk in here if you want, reach whatever arrangement you want to reach.

MR. DERSHOWITZ: I am happy to talk in your presence, your Honor.

THE COURT: Really the bail issue is taking on an importance it should not have.

MR. DERSHOWITZ: I completely agree with you. You know we have spent so much time and energy and resources on a bail issue that never should have been started at all.

I think the only important issue is the government can't, with a straight face, argue that this is a frivolous motion. I for one can represent to this Court that the day that I am convinced that Mr. Ostrer does not have a very substantial issue going to his innocence in this case, that is the day I will not appear and ask for further bail. I think this is --

THE COURT: The last issue was very substantial but it didn't go to innocence. I think you are talking about two different things.

MR.DERSHOWITZ: I am talking about this issue. That issue was a Sixth Amendment issue, a substantial one, and this one does go to innocence, and I for one, in light of the fact of how long this has been going on, if Mr. Ostrer has to go to jail, I want to see him go to jail as soon as possible.

I don't want to see it stretched out any more but that is a very serious matter, and it may ultimately result in a reversal, and it would be an outrage for him to have to have spent time in prison if there is a substantial likelihood of its being reversed. And I think your Honor's suggestion of a staged bail determination -- in fact, you can ask them, I had suggested that prior to the hearing today -- a staged bail application.

There shouldn't be a decision today granting bail forever. There should be a decision granting bail today until the hearing is held. At the hearing a new determination on bail can be made, and I think if the government would agree, and if the government wanted the hearing to be any earlier, we indicated that we are prepared to go earlier.

We just want bail to last until the hearing is had and until the Court can rule on the basis of the fullest record and information and we would ask the government to consent to that on my firm representation that we are not going to ask for delays in this case, but we are just asking for delays in the bail until the serious issues can be at least preliminarily resolved.

THE COURT: You see, if I had agreement, I would not have to make any findings, and I would not be in a position of appearing to influence the apparent view of this case which the Court of Appeals has taken by issuing a memorandum forthwith.

I might say also if I can't get a consensual arrangement,and I do have to take this responsibility, I may accelerate the time of both of you for your papers and get your hearing a little earlier, although May 11th is right around the corner. That is not so far away.

I am going to excuse myself and let you talk with each other.

When you want to speak with me, you can come out in the courtroom.

(Recess)

(In the robing room)

THE COURT: Who wishes to be heard?

MR. PEDOWITZ: I think I would just like to state what is the common ground anyway of what the government is willing to do, which I think is the least that Mr. Dershowitz will accept.

Your Honor, we will consent to a continuation of bail until you have had an opportunity to assess the adequacy of our response to the papers which Mr. Dershowitz will file in a week. We think that that is required because it is [illegible] difficult to assess the quality of the submission that Mr. Ostrer has made without, I think, having papers from the government.

THE COURT: I certainly agree with that, but the problem that that presents is that I cannot act in the matter ex parte. I would have to hear both sides.

MR. PEDOWITZ: I understand, your Honor, so we are consenting to a continuation.

THE COURT: Why don't you consent to May 11th?

MR. PEDOWITZ: We don't want to do that for the following reason: We are willing to consent until you have had an opportunity to assess our response.

THE COURT: Assume I have read the papers on the 8th of May, just to pick a date, am I then supposed to call up Boston and tell these people, "Come on down to New York now, I have read the papers and assessed them, and I am prepared to consider your contested bail application"?

I don't see much purpose in that.

MR. PEDOWITZ: I don't think there is any need for any further argument on it, your Honor. They will submit their papers and we will submit ours in two weeks' time. Mr. Dershowitz has requested two or three days in which to reply.

MR. DERSHOWITZ: If necessary.

THE COURT: I can move up your hearing date, if that helps any of you.

MR. DERSHOWITZ: We have no objection to that.

MR. PEDOWITZ: Your Honor, I don't think we are necessarily talking about a hearing because it is going to be our position that we don't need a hearing.

THE COURT: Yes, but you understand that we are talking about two different hearings. He is entitled to have a hearing on bail. That hearing may be very truncated, in other words, it is not a due process hearing, but he is entitled at least to come into court and attempt to persuade, assuming the judge reaches the viewpoint on the 8th or the 7th or whenever that is, based on these papers there is not much probability of success, then counsel at least is entitled to listen to the Court say that, and be heard to tell the Court why that conclusion is incorrect before there could be any ruling on this application.

You can't hear those applications in absentia.

MR. DERSHOWITZ: Your Honor, I really don't even think there is any difference between us, if you think about it, practically. If your Honor were to read the material during the week of the 4th or whatever, and conclude, which we would hope you would not conclude, that no hearing is required, that you are prepared to resolve the issue against us, we would assume at that point that you would revoke bail.

THE COURT: Just unilaterally?

MR. DERSHOWITZ: No, no, of course not.

THE COURT: I tell you gentlemen this bail is taking on importance beyond the substantive issues in the case.

MR. DERSHOWITZ: It is, and for us to have to come down, I think -- your Honor, for us to have to come down --

THE COURT: Why don't you go with the 11th?

MR. PEDOWITZ: What I don't like about May 11th, to be quite candid with you, is the act that it suggests there is going to be a hearing here. We want to make it very clear that we don't htink that there is going to be a need for a hearing in this particular matter. We would like a ruling by the 11th, if your Honor feels that that would be an appropriate day on which to make a ruling.

THE COURT: I will have a hearing on the 11th on the subject of bail, whether I have an evidentiary hearing on his underlying matters or not.

MR. PEDOWITZ: That is fine.

MR. DERSHOWITZ: That is agreeable, Judge.

MR. PEDOWITZ: One other point I wanted to make and that is this: If your Honor ultimately determines that a hearing is required, we don't think that that is necessarily a finding that bail -- further bail is appropriate.

THE COURT: I think that may be true, but you are jumping the gun because neither you nor I nor your adversaries have read all the papers in this matter, so we don't have to talk about academic questions. I have told you all that before.

You have to go day by day in these matters. It would be of assistance to the Court if all of you would proceed on that basis.

How do you want to handle it outside?

MR. PEDOWITZ: I think we can consent here, your Honor, just to a continuation of bail.

THE COURT: Until the close of business on the 11th?

MR. PEDOWITZ: Yes, your Honor, until you have ruled.

THE COURT: All right. On the 11th I will see where I stand. I will know then. I will have all the papers.

Is it necessary to state that outside on the record? Do you waive my instructing Mr. Ostrer about his obligations?

MR. DERSHOWITZ: Yes, we will take the responsibility of informing him.

THE COURT: How about you? Is that satisfactory to you?

MR. PEDOWITZ: That is fine, your Honor.

Your Honor, there was one matter --

THE COURT: It is consented that he is continuing on his existing bail until the close of business on May 11th.

MR. PEDOWITZ: In reading over the papers, I notice that Mr. Ostrer has apparently paid some of his fine but has not paid the rest.

I would like a clarification on that because I had been under the impression that the fine was ordered paid and that that had been paid.

MR. SILVERGLATE: In installments.

MR. DERSHOWITZ: My understanding is that he has an agreement with the United States Attorney's Office to pay a certain amount per month, and that he has been paying it with regularity. It has been a tremendous burden, but I know he has talked to me on various occasions that it is due this day,or on one or two occasions, I think, when he has not been able to make the payment until a few days later, we have called -- I can't remember his name --

THE COURT: Jupiter.

MR. DERSHOWITZ: Jupiter, that is the man's name, Mr. Jupiter, but I think it is all in order.

THE COURT: Verify it so that won't be a source of irritation.

MR. DERSHOWITZ: I have never been consulted by Mr. Jupiter to indicate there is a problem.

THE COURT: You find out.

MR. PEDOWITZ: Your Honor, I don't think you need be concerned about the Court of Appeals' view of this. I think that the mandate was issued forthwith solely on that one matter, and we did view you as having power to --

THE COURT: I know you told them that in writing, but they don't ordinarily issue a mandate forthwith unless it is the view of the panel that the man ought to be in jail. And you can't overlook that fact.

All right. Thank you all.

(Adjourned to May 11, 1977, at 10:00 a.m)

1321

rke 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

UNITED STATES OF AMERICA, : 77 Civ. 1805 (CLB)

-against- : ~~71 Cr. 558 CLB~~

LOUIS OSTRER, :

Defendant. :

---------------------------------------x

May 10, 1977
10:30 a.m.

BEFORE:

HON. CHARLES L. BRIEANT,

District Judge

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York
BY: LAWRENCE PEDOWITZ, ESQ.
RICHARD WEINBERG, ESQ.,
Assistant United States Attorneys

ALAN DERSHOWITZ, ESQ.
-and-
SILVERGLATE, SHAPIRO & GERTNER, ESQS.
BY: HARVEY SILVERGLATE, ESQ.

rke 2

THE COURT: Gentlemen, this matter is here on a petition pursuant to Section 2255 of Title 28, and I indicated informally to counsel that it was my intention to hear preferrably in the following order, first the contentions of the petitioner as to non-compliance with the Rule of Bradey vs. Maryland, non-compliance with Title 18, Section 3500 and specifically with request to the so-called Natco swindle and the alleged release of the proceeds thereof to Hellerman for the alleged purpose of satisfying obligations owing to a lender.

Second, petitioner's contentions concerning the Government's participation, if any, in connection with Hellerman's trip to Switzerland while under indictment, but prior to testifying at Mr. Ostrer's trial and the related allegations concerning the exportation of money during that trip, to the extent the Government had notice or participate in the exportation of money.

Third, the contentions concerning an alleged promise made to Hellerman that his friend and attorney Morri Winter would not be indicted or prosecuted and,

Fourth, the contentions concerning alleged efforts of the Government to obtain a reduction in Hellermar personal legal fees.

Most of these contentions, if not all of them, were derived from a book which Hellerman has just published entitled "Wall Street Swindler." The Court has assumed from the prior proceedings that these matters were not disclosed or not fully disclosed within the 3500 material or Bradey material furnished to the defendant's counsel at the time of his trial.

I am not certain how clear that point is, but I am drawing that inference unless the Government indicates otherwise, which would have to appear from the transcript or the 3500 material. Certainly some part of the Natco swindle was disclosed in the agreement for cooperation itself.

I am prepared to take your proof on this item and you may proceed.

MR. SILVERGLATE: Is Michael Hellerman here?

MR. WEINBERG: Your Honor before Mr. Hellerman takes the stand, the Government would move that all people in the courtroom, except for attorneys from the United States Attorneys Office, attorneys representing Mr. Ostrer, Mr. Ostrer himself and Mr. Ostrer's immediate family, be excluded from the courtroom.

THE COURT: What is the purpose of that?

MR. WEINBERG: Mr. Hellerman has been relocated.

THE COURT: He is not going to testify where he is living.

rke 4

MR. WEINBERG: The way Mr. Hellerman looks today is something the Government would assume other people not know about.

THE COURT: Mr. Hellerman has published a book under his own name.

MR. WEINBERG: I understand that. It does not indicate to anybody what Mr. Hellerman's physical appearance is today.

MR. SILVERGLATE: If your Honor please, it is not my intention to ask where he is living.

THE COURT: I wouldn't allow you to ask where he is living.

MR. WEINBERG: The Government's concern is simply as to Mr. Hellerman's physical appearance.

THE COURT: He has walked in and out of the building this morning?

I will have a marshal make a check of the spectators and find out who they are but I really basically belie the administration of justice does not properly conduct itself behind closed doors, and you are asking me to hold, in effect, an in camera hearing.

If there is any hoodlum in here, I will have him chased, but if we have ordinary spectators, we will find out who they are. We will have the marshal find out who they are

rke 5

MR. WEINBERG: The Government doesn't want to get into a position of designating people as hoodlums as against ordinary spectators. I don't know myself who is in the courtroom.

THE COURT: Everybody in the courtroom has a choise at this time of either stating his name or leaving. Even in the spectator's rows.

Madam, who are you?

MS. GELMAN: Dina Gelman.

MR. WEISSMAN: Herbert Weissman, an attorney.

THE COURT: Who do you represent?

MR. WEISSMAN: I am just an attorney here, your Honor, a friend of Mr. Ostrer's.

Ms. OSTRER: Rita Ostrer, Louis Ostrer's wife.

THE COURT: Who are you, sir.

MR. DERSHOWITZ: That is my son.

THE COURT: Professor Dershowitz's father.

The gentleman behind you?

MR. COHEN: Gerald Cohen.

THE COURT: What is your connection with the case?

MR. COHEN: Just walked in. I am a Federal agent but I just walked into the room.

THE COURT: You are with the FBI?

MR. COHEN: No, with the Treasury Department.

rke 6

THE COURT: You, sir?

MR. FORMAN: Paul Forman, I am with the firm of Philip Niser.

THE COURT: Who is in the back?

MR. PODDINGTON: John Poddington, the U.S. Marsha Service.

THE COURT: The book is dedicated to you. You can stay.

MR. SMILOW: Marvin Smilow from the New York Post.

MR. DVORKIN: Michael Dvorkin, U. S. Attorney's Office.

THE COURT: No sketches are to be made of the witness, Mr. Smilow?

MR. SMILOW: I don't draw.

MR. SILVERGLATE: Your Honor, Mr. Poddington might be a witness.

THE COURT: Mr. Michael Pollack, you are here?

MR. POLLACK: Yes.

THE COURT: Are you here officially, Mr. Poddington?

MR. PODDINGTON: Yes.

THE COURT: I will not exclude him. I don't see how he can be a witness but that is neither here nor there.

Call the witness.

MR. DERSHOWITZ: Your Honor, Benjamin Ostrer's son has just walked in. He is a law student who just graduated and he has been helping me.

THE COURT: All right.

xxx MICHAEL HELLERMAN, called as a witness by the defendant, having been first duly sworn by the Clerk of the Court, testified as follows:

THE COURT: All right, Mr. Silverglate, please proceed.

xxx DIRECT EXAMINATION

BY MR. SILVERGLATE:

Q Sir, are you the same Michael Hellerman who testified in United States v. Louis Ostrer in this court?

A Yes, sir.

Q And you testified in several other cases after that, is that correct?

A Yes, sir.

Q Altogether, in how many cases were you a witness for the Government at the trial level, as opposed to just the Grand Jury, for example?

A U.S. v. Ostrer, United States v. At Your Service Leasing. U. S. v. Tramunti. U.S. v. Gugliaro. U.S. v. Katz. U.S. v. Weisman. U.S. v. Koss. Approximately seven or eight cases.

Q When was the last time you testified in any of those cases, sir?

A U.S. v. Weisman.

Q Do you remember the date?

A No, I don't, sir.

Q Do you remember the year?

A I think it would be 1975. I am not sure.

Q Have you had occasion recently to review any of the transcripts of your testimony in any of those cases?

A No, sir.

Q Did you review any transcripts of your testimony for the writing of your book?

A No, sir.

Q Did Mr. Renner review them, do you know?

A He might have. I don't know, sir.

Q Did you use any notes of any kind to refresh your recollection in preparation for the writing of "Wall Street Swindler"?

A No, sir, I did not.

Q Did you dictate any cassettes or taperecordings or any notes like that?

A Yes, I did.

Q Will you please tell me how you did that?

A Mr. Renner and I spent approximately anywhere between 25 and 40 or 50 hours together and he asked me questions and I answered the questions and he made -- he was taping while I answered the questions.

Q Did you learn whether or not Mr. Renner referred to any official files or records or transcripts in writing the book?

A I don't know whether he did or didn't, sir.

Q When did you meet with Mr. Renner to prepare this book?

A I don't know the exact date but approximately it would be about a month or two after the arrangement was made with Doubleday.

Q When was the arrangement made with Doubleday?

A I don't have the exact date, sir. I wouldn't want to guess.

Q Did you have a contract with Doubleday?

A Yes, sir.

Q Did you receive an advance under that contract?

A Yes, sir.

Q Did that advance go to you, sir?

A No, sir.

Q Did it go to a corporation?

A Yes, it did.

Q What is the name of the corporation?

MR. WEINBERG: Objection.

THE COURT: I don't know that the name of the corporation is relevant. He may establish who owns the corporation.

MR. SILVERGLATE: The name of the corporation is public record.

THE COURT: I didn't notice it in the book. Whereabouts is it?

MR. SILVERGLATE: Your Honor didn't have a published version.

THE COURT: It turns out one of the law clerks was interested enough in this case to go buy a copy of the book for me for the law clerk's own use and I have appropriated it, but where does it say?

MR. SILVERGLATE: In the copyright.

THE COURT: Je-Hel Corporation?

MR. SILVERGLATE: Yes.

THE COURT: Then there is no use in asking him th question.

MR. SILVERGLATE: It wasn't clear to me they got the money.

Q Je-Hel Corporation, did they receive the advance?

A That is correct.

Q Is Je-Hel Corporation to receive royalties also?

A I believe so.

Q Any other monies arising out of this book or the exploitation of this book, the Je-Hel Corporation is to receive?

A Are you asking me --

THE COURT: I would assume whatever they are going to make, they are going to make. I am not conducting supplementary proceedings to judgment here.

Q Who is the owner of Je-Hel?

A My wife.

Q Does your mother have an interest in it?

A No, sir, not to my knowledge.

Q When did the idea of writing this book first come up?

Let me change that. When did you first think about writing this book?

A While I was in prison.

Q You were in prison for three days?

A No, sir, a little over nine and a half months.

Q You were in a safe house?

A A safe house is a maximum security prison for witnesses so you don't get killed.

Q I understand that. You have made that clear in all your prior trials, but I am asking you how many days were you in a jail?

A Nine and a half months.

Q You surrendered the day after Christmas, 1972, is that correct?

A Yes.

Q And you spent some time in a jail, an institutio with bars on the door, is that correct?

A Yes, sir.

Q That was for how many days, sir?

A Three days.

Q And you were then habeaed, a habeas corpus order producing your body as a witness here in New York was issued?

A I was here.

Q You were picked up by the U. S. Marshals at the jail?

A Correct.

Q And you were brought to New York, were you not?

A Yes.

Q Did you ever return to an institution with bars

A Yes.

Q Other than a safe house?

A I don't know what you want to call it, but it had bars and cells and bars and the windows were barred and where you slept was barred.

Q Did you ever serve any time though in an institution other than a safe house after that three days?

THE COURT: I think he told you he did not. Let's move right along, if you don't mind.

Q When was the last time you met -- when was the last time you had a discussion with Robert Morvillo?

A The last time I saw him?

Q The last time you had a discussion with him. That includes telephone.

A Yesterday afternoon, sir.

Q When were you first made aware that the motion was filed in this case concerning your book?

A Approximately two weeks ago.

Q How many times since then have you conferred with Mr. Morvillo?

A I never conferred with him. You asked me when I saw him.

Q I asked you when you conferred with him, whether by telephone or in person and you said yesterday.

A I saw him yesterday.

Q Is that the only time that you either conferred or saw or met with Mr. Morvillo after you learned these motions were filed?

A Yes.

Q You had no other telephone conversations with him?

A No, sir.

Q Was the meeting yesterday at your request or his?

A I can't answer that. If you would like me to explain.

Q [illegible] would like you to explain.

A I was leaving Mr. Weinberg;s office and Mr. Morvillo was coming into Mr. Weinberg's office. I said hi, he said hi. He said I can't talk to you until after this thing is over with and we said boodgye and that was the extent of our conversation.

Q And there was no other meeting you had with him?

A No, sir.

Q The tapes that you made in preparation for this book, do you have them?

A I never had them, sir.

Q Mr. Renner had custody of them at all times?

A That is correct.

Q Do you have any way personally of knowing whether they are still in existence?

A I believe they are. My best recollection is that

Mr. Renner told me that he keeps the tapes in some vault or safe place and to my knowledge I would say Mr. Renner has the tapes, yes, sir.

Q Did he tell you how long he generally keeps takes with respect to a book he is writing?

A Forever, I would guess.

Q That is a long time. Did he ever tell you how long he keeps them?

A No.

Q Did he ever tell you he keeps them until a certain number of years?

A No, sir.

Q Do you know from your personal knowledge whether the manuscript or the page proofs of this book were verified by anybody?

A Will you explain yourself, sir.

Q Did you see page proofs or typescript of this book before it was published?

A Of some of them.

Q Of some of the pages?

A Yes.

Q You did not see the entire book before it was published?

A No, sir.

Q Were there any special sections that you saw?

A Yes.

Q What sections were those?

A The ones -- most of the ones to do with the stock dealings.

Q Who was it who showed you those pages? Who gave you them?

A They were conveyed to me by Mr. Renner.

Q Did he ask you to read them?

A Yes.

Q Did he ask you to comment on them?

A Yes, he did.

Q Did he ask you to comment on their accuracy, sir

A Yes.

Q Did you comment on their accuracy?

A Yes.

Q Did you have occasion to make any changes or corrections in them?

A Yes, I did, sir.

MR. SILVERGLATE: Your Honor, I would like to, since we have been using the uncorrected proof, I thought perhaps it would be best and all of my motions relate to the uncorrected proof, I thought it would be best to use it for examination purposes.

THE COURT: I have no objection to your proceeding in that fashion.

Of course there is no question that the book is easier to prove than the proof, but you may use whatever you like.

MR. SILVERGLATE: We are trying to do some kind of concordance to refer the cross reference to pages between the two editions.

THE COURT: We don't have to try the whole book.

Q I show you a copy, Mr. Hellerman of "Wall Street Swindler", the version that is on the stand now.

Would you care to tell me what chapters you verified?

A I didn't do it by chapter, sir.

Q How did you do it?

A Mr. Renner would get in my hands pages, and he would read me on the telephone, let's say, 20 pages, hypothetically, and if I said no, that is incorrect, he would then send me the copies, I would then read them, I would make any corrections that were supposed to be made.

They weren't by chapter or number or anything like that.

Q Did Mr. Renner tell you he was having anybody else verify this book?

A No, sir.

Q Do you know whether or not anybody else verifie any portions of this book?

A No, sir.

Q Do you know whether Mr. Morvillo saw portions of the book before it was published?

A No, sir, I do not.

Q Up until this week, when was the last time you saw or spoke to Mr. Morvillo?

A Well over a year, year and a half ago, two year ago.

Q Was that in connection with the trial?

A I don't remember, sir, or if I saw him in the U. S. Attorney's office for a second. I just don't remember.

Q So you say that you verified portions of the book concerning the deals, the stock deals?

A Yes, sir.

Q You were involved in a bankruptcy fraud involvi Natco Beauty Supply Inc. and Merchandise Plus, Inc., were you not?

A Yes.

Q You wrote about that in the book?

A Yes.

Q Did you verify portions of the book relating to that fraud?

A No, sir. What do you mean? Did I read it?

Q Are those among the pages that Mr. Morvillo gave to you?

A I don't remember, sir.

Q Excuse me, not Mr. Morvillo, Mr. Renner.

A I don't remember, sir.

Q When you made the dictations, sir, the preparation for this book, was the information you dictated into those tapes, to the best of your knowledge, at that time accurate?

A Yes, sir.

Q Do you have any reason now to believe there was something you might have said in those tapes that is inaccurate?

A No, sir.

Q Would you kindly tell us, explain very briefly, how the Natco-Merchandise Plus fraud was supposed to work?

A You want to go back and discuss the whole thing?

Q It is easier than my asking a million questions about it. Perhaps you can give us a short briefing on how that fraud was supposed to work.

A The company had a lot of merchandise.

Q Which company?

A Natco had a lot of merchandise.

THE COURT: What is the page in the book?

MR. SILVERGLATE: The page in which that is discussed in the uncorrected proof --

THE DEFENDANT: 256, your Honor.

THE COURT: Thank you.

Go ahead.

Q Mr. Hellerman, let me start with a couple of questions.

Natco and Merchandise Plus; were these corporations taken over by either you or your people at the same time?

A Yes, sir.

Q Were they both purchased from the same owner?

A I don't remember. I think so.

Q Who purchased the corporations?

A Steven Schustek.

Q Were you working with Steven Schustek?

A Yes, sir.

MR. WEINBERG: Your Honor, I will object to this line of questioning. It seems to the Government, according to the letter from your law clerk to counsel, we were suppos to confine ourselves to fairly narrow issues.

THE COURT: I think he is able to lay the foundation about the Natco swindle and some of this I assume is already in the book. I don't quite get the point of your objection.

MR. WEINBERG: My objection is, your Honor, what is at issue here is whether or not Mr. Morvillo aided Mr. Hellerman in getting $80,000 of Natco funds for Mr. Hellerman's own personal use and whether the Government failed to disclose that at the Ostrer trial.

The issue at this hearing is not the details of the Natco fraud.

THE COURT: I think counsel can establish the existence of the $80,000. I think it is permissible.

It is all disclosed in the book anyway, but the book is not sworn testimony.

MR. SILVERGLATE: That is precisely the point.

THE COURT: Please proceed.

Q Mr. Hellerman, Mr. Schustek was working with you, was he not?

A Yes.

Q And he was an officer of Natco and Merchandise Plus, was he not?

A Yes.

Q And he became an officer after he purchased the

ed

stock?

A I imagine so. I don't remember the details but I would imagine so.

Q You helped him purchase that stock?

A Yes.

Q In fact you directed him to purchase it?

A Among others, yes, sir.

Q Among others? You mean you directed Schustek among others to purchase it or you directed Schustek to purchase merchandise and Natco among others?

A The latter.

Q Do you know who it was purchased from, those companies?

A I don't remember the man's name.

Q Is there any reason that you purchased two corporations rather than one?

A I must have had two corporations.

Q Was the idea to purchase those companies yours, sir?

A Not originally, no.

Q Whose was it originally?

A I believe that the owner of the company and Ira Schultz were close friends. The owner of the companies wante to buy out his partners. They wanted to buy out his partners he needed money and they came to me.

Q Who is "they"?

A Ira Schultz and I forget the other man's name. The original owner, one of the original partners in the company that he bought out.

Q When they came to you, did they suggest that you arrange for the purchase of the corporations?

A Arrange to get the money.

Q To get the money to purchase them.

A Yes.

Q Was there any suggestion at that point of any fraud or swindle?

A Not at the beginning, no.

Q At what point did the discussion of a fraud enter and who suggested it?

A I guess to the best of my recollection, when the shylocks started to put the pressure on to get their money back.

Q Pub the pressure on you, sir?

A Yes, and that is when the fraud -- it was conceived to sell off the merchandise and keep the cash.

Q It was conceived?

A We decided to sell off the merchandise and keep the cash.

Q Whose idea was that?

A Mine.

Q You owed the money to the shylocks?

A I was responsible to them, yes.

Q You were the architect of the Natco-Merchandise Plus fraud, were you not, sir?

A Yes, sir.

Q Who is Mr. Schultz, by the way, is he a relation to you?

A Cousin.

Q At some point did he learn there was a fraud planned for these companies?

A Everybody learned.

Q I didn't know about it.

THE COURT: Let's not argue with the witness. Frame a question.

Q Who is everybody?

A Everybody in the deal.

Q Those included Ira Schultz, yourself, Steve Schustek?

A The original owner of the company and the shylocks that loaned the money, Sammy Falgiano, Rizzo, Dave Petillo, Tony Soldano. Everybody that was involved.

Q Is Falgiano also known as Sammy Feet?

A Yes, sir.

Q Can you tell us when the fraud began?

Withdrawn.

Can you tell us when merchandise started to be ordered for these companies?

A To the best of my knowledge, the merchandise was already there.

Q What do you mean?

A They had the inventory.

Q The Merchandise inventory --

A When I talk about Natco or Merchandise, it is the same company.

Q Was additional inventory ordered after Mr. Schustek took over?

A It might have been. I never saw any bills. I just don't know.

Q There were bills owed by those companies at the time they were taken over?

A I am sure.

Q In fact you were all familiar with the bankruptcy proceedings that followed with the bankruptcy? Are you familiar?

A No.

Q You did anticipate, however, that the companies would be driven into bankruptcy?

A I didn't care at that point.

Q I take it what was important was that the merchandise be sold, the proceeds be siphoned off and anybody stuck with bills were simply stuck with bills, is that correct?

A Yes, sir.

Q You were aware at the time this would have been a violation of the bankruptcy act among other statutes?

A I didn't think about it.

Q You didn't think about it.

You were aware it was an unorthodox way to do business?

THE COURT: He was aware it was larceny. Let's proceed. I can't take forever with this thing.

Q Will you explain to the Court, please, how mone was taken out of the corporation? Physically, what were th steps?

A Every week Schustek took money out.

Q How did he do it?

A Cash a check, I believe, and gave Schultz and t original owner his end and brought interest to the shylock and took out his end and brought me my end. When they were trying to accumulate a large sum of money so it could be ta out at one time and the shylock paid back and whatever was left would be divided up among everybody.

Q When you say Schustek took out money, did he write himself a check?

A I don't remember how he did it. He took the money.

Q Was money deposited in the corporate bank accounts?

A I believe so. I don't remember. I don't know.

Q Do you know about how much money was taken out, altogether?

A No, I don't know how much money was taken out.

Q At some point, sir, there was $80,000, more or less, left in Natco?

A Yes, sir.

Q Actually, there was more than 80,000, there was also some inventory, hair spray and stuff.

A I don't know about that.

Q Do you know if there was left some vehicles?

A I don't have any knowledge of that, sir. I didn't care about it.

Q But you do know at the tail end of this thing there were $80,000 in cash?

A Yes.

Q In the bank?

A Yes.

Q In a checking account?

A I assume so.

Q And you planned to siphon that money off as well, did you not?

A No. At that point we planned on getting the money to pay the shylock back, use the money to pay the shylock back.

Q By this time I take it they were pressing you and you wanted to pay them?

A They were pressing us for a long time.

Q Was there a problem with respect to getting this $80,000 out?

A No. What kind of problem?

Q Let's start from the beginning. Did somebody make out a check for this 80,000?

A To the best of my recollection, Mr. Schustek made out a lot of checks totalling $80,000.

Q Do you know if Schustek made out a check to himself, Steven Schustek?

A Yes.

Q Was that for $80,000?

A Approximately $80,000.

Q And you were aware at the time that this check was made out when it was made out?

A Yes.

Q And you were aware of the fact that the goal here was to somehow cash that check and divide up the $80,000?

A No.

Q What was the goal?

A To cash the check and pay the shylocks.

Q That was to pay the shylocks for the debt that you owed them?

A That all of us owed them.

Q Do you know when that check was written?

A I don't know the date, sir.

Q But you do know it was written by Steven Schustek?

A To the best of my recollection.

Q By the way, all of these checks in the siphoning scheme were written by Steven Schustek?

A I believe so.

Q Do you know where he cashed them?

A Either the bank or a check cashier or whatever.

Q This check was not cashed at a bank?

A Which one?

Q The $80,000 check.

A You are jumping from the beginning of the sequence to the end of the sequence. I don't understand what you want. If you tell me what you want, I will be glad to tell you to the best of my recollection.

Q Was the $80,000 check cashed by Schustek or was it deposited somewhere?

A Both.

Q It was deposited first, is that right?

A Yes -- no.

Q Let me start again.

Were there attempts made to cash the $80,000 check which was unsuccessful?

A I can't answer that. If you would like me to explain, I will be glad to explain.

Q I would like you to explain.

A The $80,000 was taken first by Sammy Feet and Steve Schustek to Las Vegas.

Q You mean the check for $80,000?

A That is what I said.

Q You said the 80,000.

THE COURT: Don't argue.

A The $80,000 was taken to Las Vegas where Sammy Falgiano had friends where they were going to deposit it in one of the hotels, I think the Stardusk and when the check cleared, they were going to put it on a facsimile of gamblin and get the $80,000.

Q Let me see if I understand this.

They were going to deposit the check in a casino?

A Yes.

Q Were they going to take back gambling chips for it?

A No, sir.

Q They were going to create, however, a credit balance in their favor with that casino, were they not?

A Yes.

Q Then they were going to remove that $80,000 in cash from the casino?

A Correct.

Q And that was the 80,000 in cash used to pay the shylocks?

A Correct.

Q What happened with respect to that effort to cash the check at the casino?

A It was aborted.

Q How was it aborted?

A I wasn't there, I don't know.

Q Did anybody tell you why it was aborted?

A I don't remember.

THE COURT: Did you tell them to go cash the check in that fashion?

THE WITNESS: We had sat down and figured the best way to cash a large check of that denomination.

THE COURT: And you thought a hotel or a casino would take a corporation check in that denomination?

THE WITNESS: With the organized crime in Las Vegas and Sammy Feet said he would have a phone call made to somebody in Las Vegas and they would take care of it.

Q Previously you had cashed checks in a casino?

A Corporate checks?

Q I don't think it makes a difference.

THE COURT: I think it makes a difference. Personal checks you can usually cash. This was a corporate check.

Q It was made payable to Schustek personally.

A To the best of my knowledge, yes.

Q And Schustek signed the check, didn't he?

A To the best of my knowledge.

Q Did you have check-signing authority?

A No.

Q Schustek was an officer.

A Yes.

Q Do you know, by the way, whether the 80,000 was written on a Natco check or Merchandise Plus check?

A I don't know, sir.

Q Were there separate records kept for these corporations?

A I don't know if any records were kept.

THE COURT: Let's get right down to it. As I understand it the casino wouldn't cash it.

Q What was the next effort made to cash it?

A Falgiano or Sammy Feet and Schustek came back to New York and Falgiano said he was taking the whole $80,000 because there were two sides of shylocks involved. There was Falgiano's side and there was Davy Petillo's side and Falgiano had got Jilly Rizzo to put up X dollars and I had got Tony Soldano and Petillo to put up the money. There was a big beef going on when Falgiano was going to grab all the money. At that point Johnny Dio was in jail already so I didn't have anybody to run to. I went to Mr. Ostrer's partner and asked --

Q You went to Mr. Ostrer's partner. Who was that?

A Nickie DiLorenzo. I sent Marty Roth to DiLorenzo to intercede on my behalf because it was getting to the place where everybody, specially me, was going to get killed.

Q You were afraid of getting killed by whom?

A Both the shylocks. The one that didn't get the money.

Q Do you know if Mr. Ostrer was involved in the Natco-Merchandise Plus swindle at all?

A He wasn't.

Q He was not?

A No.

Q You referred tohis partner as DiLorenzo.

A Yes.

Q You had no special reason for referring to Mr. DiLorenzo as Mr. Ostrer's partner?

A Just that Mr. Ostrer knew what happened. If you are his attorney, he should tell you everything.

Q Mr. Hellerman --

THE COURT: Please, gentlemen, let's keep tracin the check. That is what I want to hear about.

You have to fix a time, either intrinsically or through this witness.

MR. SILVERGLATE: Your Honor, may I just pursue this.

THE COURT: It is irrelevant, isn't it?

MR. SILVERGLATE: I think it is relevant to the credibility of this witness, if I might.

THE COURT: What is it you want to ask him.

MR. SILVERGLATE: I want to find out why he gratuitously suggested that Mr. Ostrer was a partner to this thing.

THE COURT: I don't think he suggested that. He suggested that Mr. DiLorenzo and Mr. Ostrer had been partners, and I assume he uses the word "partner" in a colloquial fashion.

Please ask the next question.

Q Mr. Hellerman, would you tell us, ifyou can remember, when you went to Mr. DiLorenzo?

A I didn't go. I sent Mr. Roth.

Q When did Mr. Roth go to Mr. DiLorenzo?

A After they came back from Vegas.

Q When did they come back from Vegas?

A I don't remember the dates or the times. I will be glad to tell you the story about cashing the check.

Q I would rather ask you questions, sir.

THE COURT: That is all right up to a point, but we have to move along. There is no jury here and we might just as well get to the bottom of it.

MR. SILVERGLATE: I have been good about letting him explain things.

THE COURT: Please proceed and frame a question.

Q Mr. Hellerman, you initiated the Natco-Merchandise Fraud sometime early August of 1970?

A If that is the date, I will accept it.

THE COURT: He is asking you your best recollection.

THE WITNESS: I don't have a recollection, your Honor. It's a long time ago.

Q Belmont stock collapsed in June of 1970, right, sir?

A Again, I will accept your word as to the date. I don't have any recollection of sequence of dates or deals at this point in my life.

Q Assuming, sir, it was in August that the Merchandise Plus and Natco fraud was initiated --

THE COURT: Is the check in evidence?

MR. SILVERGLATE: Yes.

THE COURT: Would you submit it?

MR. SILVERGLATE: We don't have it.

THE COURT: Do you have it, Mr. Weinberg?

MR. WEINBERG: I don't have it.

MR. SILVERGLATE: I subpoenaed it from a party that got it from the U. S. Attorney.

THE COURT: Even a photostat of it would tell us the date of the check.

MR. WEINBERG: It's possible somewhere in our files we have it. I simply don't have it at this point.

THE COURT: We have to assume when the check went to Last Vegas, it was dated and signed, when it was first presented to a hotel or casino out there. That will at least give you a date.

Do you know the date on the check?

MR. SILVERGLATE: I don't know the date on the check.

THE COURT: Is there anyone in this proceeding who has seen this check?

MR. WEINBERG: I have not, your Honor.

THE COURT: Proceed.

Q What happened after Mr. Roth went to Mr. DiLorenzo?

A I did not witness it and I was not there. I am repeating what Mr. Roth told me and that Mr. Petillo and other wise guys told me, that Sammy Feet was told that he shouldn't put the kind of pressure he was putting on me and that it had to be straightened out and everybody had to get their money.

Well, Sammy Feet and Schustek arranged through Steve DiPasquale to go to the Bahamas and Sammy Feet wasn't going to lend to Nickie DiLorenzo and Dave Petillo told them and he was going to try to cash the check with Schustek in Paradise Island and at the same time threaten to kill me and Schustek and everybody else. It was at that point that I had

Schustek go to the FBI and tell the FBI the whole story.

Q When did you tell Schustek to go to the FBI?

A I just told you.

Q In terms of dates.

A I don't have the dates, sir.

Q You went at some point to Mr. Morvillo with this story, right?

Withdrawn.

At some point you told Mr. Morvillo that a Natco-Merchandise swindle was under way, did you not?

A Yes.

Q Was that before or after you told Shustek to go to the FBI?

A All within the same day or the same 24-hour period.

Q That was in November of 1970, was it not?

A If that is the date, I will accept your date.

THE COURT: Was this before they went to Paradise Island?

THE WITNESS: While they were in Paradise Island or just going there.

THE COURT: Who was there again?

THE WITNESS: Sammy Falgiano and Schustek were going to Paradise Island. It was right before they went.

THE COURT: And before leaving, Schustek pursuant to your instructions called the FBI?

THE WITNESS: I think they went to Paradise Island, they left the check in Paradise Island. They came back to New York and then I think they had to go back to pick up the funds after the check supposedly cleared. I think that is the way it happened, and in between that time, they were in New York when Falgiano was saying he was going to take all the funds.

Q The check was deposited in Paradise Island and there was a period you had to wait before it cleared?

A To the best of my recollection, that is what happened.

Q Who suggested, by the way, a bank in Paradise Island?

A It wasn't a bank, it was the casino.

Q Who suggested that?

A I think Sammy Feet and myself said we would go to Stevie DiPasquale who had good contacts in Paradise Island and he made the phone call to somebody in Paradise Island.

Q Did you select Paradise Island because of its banking secrecy laws?

A No, because of the casino. These checks weren't cashed at a bank, sir, or anything like that.

Q Do you know the name of the casino?

A Paradise Island Casino.

Q Was it Paradise Enterprises Limited?

A That is the name of the corporation. It was the Nassau Beach Hotel and Paradise Island. I don't know what name it is today.

We are talking about the same thing, counsellor.

Q So about the same day you went to Morvillo and Schustek went to the FBI.

A No. If you would like me to tell you -- don't put words in my mouth, please.

Q Let me ask you questions.

You went to Mr. Morvillo when you got back from Paradise Island?

A I told Mr. Morvillo and told him there was a problem. Schustek was petrified and he had to see somebody in the FBI and Mr. Movillo said it could wait and I said no, he has to see somebody in the FBI, he is going to get killed.

Q Had you before this time told Mr. Morvillo anything about the swindle?

A I don't think so.

Q Continuing describing that conversation with Mr. Morvillo.

A I may have mentioned it to Mr. Morvillo before.

I don't recall.

Q If you may have, would it have been a week or two before?

A It may have been a week or two before.

Q In order to pin the date down better, was this before or after the Imperial indictment came down, and when I say "came down," was returned by the grand jury? Before or after?

It will help you, the Imperial indictment came down on November 19, 1970.

A I would say after, if I could guess.

THE COURT: I don't need guesses.

A I don't know.

Q You began to cooperate with Mr. Morvillo prior to the time the Imperial indictment was returned, did you not?

A That is correct.

Q In fact, once the indictment was returned, you decided you could no lnger meet in Morvillo's office?

A That is correct.

Q You so testified previously --

THE COURT: Are you finished with the check?

MR. SILVERGLATE: No.

THE COURT: Let's finish with the check. We have to have some logic. You have been close to an hour with this check and now we have the check down in Paradise Island.

Q Was there some plan for retrieving the money from Paradise Island once the check cleared?

A Yes.

Q What was that plan?

A They would get the money. They would make a facsimile gambling, the same as Vegas and get the 80,000.

Q They went down in fact to get the 80,000?

A Correct.

Q Who went?

A Sammy Feet.

Q Who else?

A I don't remember if Schustek went or didn't go because the FBI was already in the case. The first time Rizzo went and Sammy Feet went and Schustek went. The second time, I don't remember if Schustek went down with him or didn't go down with him because I know when Sammy Feet got there, he was told by the casino personnel that the FBI had been here and they couldn't release the money or the check and the money was going to the FBI.

Q Do you know whether the FBI had frozen the funds?

A I don't know what they actually physically did. I am repeating what Falgiano told me. I was not in Paradise

Island.

Q To refresh your recollection, if I show you page 171 of the uncorrected proof of the book where you indicate that Schustek and Falgiano went to the Bahamas, to Paradise Island, does that refresh your recollection?

A I just told you they went to the Bahamas.

Q This is the second trip, the one to pick up the cash.

A I didn't read this. Am I talking about the second trip?

Q Yes.

A Then that is correct. Then he must have went.

Q When you say you didn't read it, you are familiar with this.

A I don't understand your question.

Q Do you recall dictating any of this into those tapes?

A I am sure I dictated it.

Q Do you know whether or not the effort to pick up the cash was successful?

A It was not successful.

Q Who told you it was not successful.

A Falgiano. I knew it wouldn't be successful before they went because the FBI told me they wouldn't get the money when they went down there.

Q In fact you were anticipating, were you not, th Falgiano would be arrested if he picked up the money; didn' you?

A I might have. If you have something there to refresh my memory, I will be glad to read it.

Q Did Mr. Morvillo tell you that Sammy Feet would be arrested if he tried to pick up the money?

A I don't remember him stating it like that.

Q I will show you page 170 of the uncorrected proof, the paragraph beginning, "After the meeting at the Track Hotel..."

A What does this have to do -- you asked me if he went to pick up the $80,000.

Q No. If I asked it it was my mistake.

A Can we have the Court Clerk read back the recor

MR. SILVERGLATE: I strike whatever question I asked and I will give you the following question.

Q Did Mr. Morvillo -- you had a meeting at the Track Hotel with Morvillo and Schustek.

A I hate to tell you, sir, I don't remember the Track Hotel, Mr. Morvillo being present. I know what it says in the book and Mr. Renner may have transposed it wrong from the tape. I know what it says in the book but best recollection is that Morvillo called the FBI and the FBI came to the Track Hotel, two or three agents and Mr. Morvillo was not at the Track Hotel that night. That is my best recollection sitting here telling you what happened. Mr. Morvillo was not there.

Q You say Morvillo wanted Schustek to set up Sammy Feet?

A To my knowledge, the FBI wanted Schustek -- it wasn't in the way it is written in the book. He had an appointment with Sammy Feet. If he didn't keep the appointment with Sammy Feet, Sammy Feet would come out looking for everybody, so they wired or put a taperecorder on Stevie and they went -- and he went to the Savoy Restaurant in Queens and two or three or four FBI agents planted themselves in the Savoy Restaurant and were having dinner while Schustek was talking to Sammy Falgiano. They were there for the fact if Falgiano smacked Schustek or hit him or as he had threatened to throw him out of a plane or do a million other things to him and me, his modus operandi, the FBI was there for that reason.

Q Do you know whether Mr. Morvillo knew that the FBI had put a stop on the money in Paradise Island?

A I would assume he did know.

Q Did you discuss it with Mr. Morvillo?

A Afterwards, yes.

Q And he told you that he knew, didn't he?

A Not the way you are asking the question. The answer to the question is yes, he knew that the FBI had put a stop on the money in Paradise Island.

Q When Falgiano came back without the money, did you have any discussion with Morvillo?

A Yes.

Q Concerning the money?

A Yes.

Q Tell us what you said and what he said and will you please tell us how long after the return of Sammy Feet from the second trip you had such a discussion with Morvillo?

A I couldn't tell you in hours or days, but a short time after or a short time before, I don't remember when, Mr. Morvillo -- I went to Mr. Morvillo and told him that Mr. Schustek was going to hire an attorney and was going to demand that he get the $80,000 back and I told him that I wanted him to do this and that I needed the $80,000 to pay the shylocks in the Natco deal, and Mr. Morvillo told me that Schustek, if you want to hire a lawyer and make a demand for the money, it will be processed like any other demand.

But if he found out that the $80,000 was used for any purpose other than an obligation of the business, he would make sure that he prosecuted Schustek, me or anybody else that was involved.

Q Mr. Morvillo then said that any request by Schustek for this money would be processed like any other demand, did you say?

A I don't know how they do it or what they did but if Schustek hired a lawyer, he wrote a letter, I don't remember what it said, demanding the $80,000 back.

Q Did Mr. Morvillo suggest that Schustek hire a lawyer?

A No.

Q But he told you, did he not, that Schustek had hired a lawyer.

A No, I told him he was going to hire a lawyer.

Q And you told him that at the same conversation when he said to him that you wanted the $80,000 to pay the shylocks?

A Counsel, I can't pinpoint A conversation, B conversation, C conversation or D conversation. I am telling you it happened. Whether it happened at 10 o'clock, 11 o'clock or two days later. It's a long time ago and I can't pinpoint exact conversations.

THE COURT: The Court will take a brief recess at this time. Everyone will remain seated until after the witness has left.

(Recess.)

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THE COURT: Let's resume.

BY MR. SILVERGLATE:

Q Mr. Hellerman, when you first told Mr. Morvillo about the Natco swindle, will you tell the Court what you did tell him? What was it you told him? What information was conveyed?

A That I needed $80,000.

So we don't confuse each other, this had nothing to do with the $80,000 check that was taken out of Natco.

I went to Mr. Morvillo and told him I needed $80,000, or approximately $80,000 to pay the shylocks because I would have to start hiding at that point if I didn't pay them the $80,000 because the pressure they were putting on was unbelievable and I wouldn't be able to be on the street and get any more information for them, for the government.

Mr. Morvillo said he would speak to the Department of Justice to see what could be worked out.

Q You mean --

A Let me finish the story. Don't cut me off in the middle.

Q Finish the story, Mr. Hellerman.

A Mr. Morvillo the next day or a couple of days after said to me that the Department of Justice would authorize the $80,000. However, when I delivered the $80,000 to the shylocks, they had to be arrested at that point so the Department of Justice could recover the $80,000.

That was no good, because that would blow my cover, so that was disbanded.

Q Continue what you told Mr. Morvillo about the Natco Merchandise Plus swindle.

A I don't understand your question.

Q What did you tell Mr. Morvillo when you first told him there was a Natco Merchandise Plus swindle in progress? What information did you convey to him?

A I don't remember. The only conversation I remember was the conversation about paying the shylocks back. What details I told him, if any, I don't remember.

Q You recall testifying, don't you, in the At Your Service Leasing case?

A Yes.

Q That would be the Aloi case, 73 Crim. 399?

A Yes.

Q Do you recall being asked during that trial about your discussions with Mr. Morvillo concerning the Natco Merchandise Plus bankruptcy swindle?

A No, I don't recall being asked anything, but if you will refresh my memory --

THE COURT: What is the date of this testimony?

MR. WEINBERG: I believe it is in late '73, your Honor.

A [Continuing] If you show me my testimony --

THE COURT: Don't volunteer advice to anybody, Mr. Hellerman.

Let's proceed, please, counsel.

Q Do you recall at that time testifying that you told Mr. Morvillo about the fraud in order to stop the perpetrators from looting the rest of the money?

THE COURT: Would you read the question and answer or else offer the transcript in evidence. The proper way to impeach a witness is to confront the witness with his prior questions and answers.

Q "Q You reported to the government?

"A Yes, and I told the government about it and that is how the fraud was stopped. That is how $100,000 was saved from being taken out of the company by my telling the government about it.

"Q I am going to ask you this question. Why did you tell the tovernment?

"A I made a deal with Mr. Morvillo to cooperate with the government at that time. I told you I stayed straight, I didn't commit any more criminal acts for approximately eight, nine -- a year. I stayed straight, I didn't do anything."

Do you remember that testimony?

A I don't particular remember it but I will accept it as a matter of record.

Q Do you recall being asked the following:

"Q Weren't you involved as one of the participants in this extortion of Natco Beauty Supply Center and Merchandise Plus as an actual participant from August 11, 1970?

"A I didn't have anything to do with extortion. I think it was a bankruptcy fraud.

"Q Bankruptcy fraud?

"A Yes, but I was not involved.

"Q Well --

"MR. SCHREIBER: Let him finish.

"THE COURT: Yes.

"A I wasn't involved but as soon as I made my understanding with Mr. Morvillo, I told Mr. Morvillo about this and I told the FBI about this.

"Q This was after you had laready committed crimes in connection with it?

"A I told Mr. Morvillo at the same time I made my understanding with Mr. Morvillo."

Do you remember that testimony, sir?

A I will accept it.

Q Is it true, sir?

A Yes.

Q In your discussion with Mr. Morvillo in which you had told him about the fraud, you told him it had been the intention of the scheme to bankrupt both corporations?

A You ask me a question I can't answer. The intention of the deal -- we never thought about bankruptcy. It only happened afterwards.

Q Did you tell Mr. Morvillo it was the intention to loot the companies or to siphon cash from the companies?

A Again, I don't remember what I told Mr. Morvillo. I remember that I told Mr. Morvillo about it. I told the FBI about it and when you asked the original question, sir, you asked me what I told them at the meeting that I asked him for the money to pay the shylocks back and again I tell you, I still don't believe at that first meeting that I told him about it because I was seeing Mr. Morvillo and/or the FBI very irregular.

I am talking about when I told him about everything as my testimony says within a short period of time, not a pinpointed meeting.

Q Prior to the time that the $80,000 was released to the attorney for the corporation, did you tell Mr. Morvillo that the aim of this scheme was to siphon money from these two corporations?

A I don't remember, sir.

Q You testified in At Your Service Leasing that you told the government about the fraud and that the $100,000 was saved?

A Correct.

Q Was that $100,000 -- was part of that the $80,000 we are talking about now?

A I would assume so.

Q And you told Mr. Morvillo, did you not, that the money was in danger of being taken unlawfully by somebody?

A Correct, sir.

Q And you admitted to him that you were originally a participant in the plan and scheme to take that money?

A Correct, sir.

Q And at some point prior to the time that the attorney for the corporation got the $80,000, you told Mr. Morvillo that you wanted it, did you not, sir?

A I can't answer it yes or no, sir. I would be glad to explain.

Q Would you?

A The lawyer tnat Mr. Schustek hired --

THE COURT: Who was that, by the way?

Q Edward Kerland?

A Yes. He said he would write and demand the money back for the company and Schustek was the president of the company. The company was not yet in bankruptcy or financial trouble or anything -- the company was still an existing company and that -- then Mr. Morvillo said to me that if Schustek or I ended up with the $80,000 and used any portion of that $80,000 for our personal gain, he would make sure we were prosecuted for it.

We had to pay debts of the corporation with that $80,000.

Q You have read Mr. Morvillo's affidavit filed in this case?

A I have not read any affidavits filed in this case.

Q Has anybody told you that Mr. Morvillo filed an affidavit in this case?

A No, sir.

Q Mr. Hellerman, you just used the phrase, it was a going corporation, a going business.

A It was not out of business yet. I am not trying a play on words with you. It was not out of business.

Q You intended that it be out of business?

A Counsel, you misunderstand. I tried to explain to you when the deal was started, no one thought about what was going to happen at the very end or down the road. I didn't know there was a Chapter XI or what had been done. If it had been mentioned to me, that portion that happened, I was out of it at that point.

Q Mr. Hellerman, you told Mr. Morvillo, didn't you, that the way funds were to be siphoned off this company was that Mr. Schustek was cashing checks made out to him?

A I don't remember if I told Mr. Morvillo that. I would assume I did.

Q In fact you told him it was a check to Schustek personally, that the $80,000 was the check to Schustek; didn't you tell him that?

A I know I told it to the FBI. I don't know if I specifically told it to Mr. Morvillo.

Q These questions I am asking you are limited to the time period before the $80,000 was returned to Mr. Kerland.

A Correct.

Q Did you tell Mr. Morvillo that Schustek was an officer of the corporation?

A I would assume so. I don't remember.

Q Did you tell him he had check signing authority for the corporation?

A Again, I don't remember but I would assume so.

Q You testified earlier that you told Mr. Morvillo that Mr. Schustek was planning to hire a lawyer?

A Yes, sir.

Q Did Mr. Schustek tell you that?

A Mr. Schustek and I had discussed it, yes.

Q Did you discuss with Schustek why he was going to hire a lawyer?

A Yes.

Q Whst was the purpose of his hiring a lawyer?

A I told him and he told me, that the attorney would make a demand for the $80,000 back. If he would get the $80,000 back, he was going to give me the $80,000 to pay the shylocks off.

Q And you told that to Mr. Morvillo?

A Yes, sir.

Q Mr. Kerland -- did you see the letter from Mr. Kerland to Mr. Morvillo?

A I didn't. I don't remember it. To Mr. Morvillo? I don't remember.

Q If I show it to you, would it refresh your recollection?

A It might.

Q One other question before I do that.

Did you see a retainer letter written to Mr. Kerland from the corporation?

A I think I did. I don't remember what it says, sir.

Q I show you both of those documents --

THE COURT: Just for my own edification, where do they come from?

MR. SILVERGLATE: Your Honor, I am holding a packet of materials called Exhibit G. I believe this was an exhibit in the case of United States v. Falgiano tried in this court, 71 Crim. 476.

THE COURT: When was it tried?

MR. SILVERGLATE: I can get you the docket sheet, your Honor, and tell you precisely.

71 Crim. 476 was actually nolle pros'd because it was superseded by 499. The indictment was filed on May 12, 1971. Trial began before Judge Lasker on April 3, 1972. Trial was concluded on April 14, 1972.

THE COURT: Did Mr. Hellerman testify in that trial?

Did you?

THE WITNESS: No, I did not.

THE COURT: How did it happen that those were in evidence at that trial?

MR. SILVERGLATE: I am not sure, your Honor. I can only tell you that the trustee in bankruptcy secured from the U. S. Attorney, copies of these materials.

THE COURT: All right. If you want to offer them, you may do so.

I have to move along here. I can't waste time over papers not in dispute.

MR. SILVERGLATE: I will hold that until a more appropriate witness.

THE COURT: Please proceed.

Q But you did see the retainer letter?

A Yes.

Q Did you and Mr. Schustek decide to retain Attorney Kerland?

A Yes.

Q Whose idea was it to retain Kerland rather than somebody else?

A Mine.

Q Did you know Kerland previously?

A Yes.

Q Had he represented you previously?

A No. Excuse me. He shared a law office with Morris Winters who was representing me and on occasion, he might have did some work for me when Mr. Winters couldn't, but that is the extent of it.

Q Did you indicate to Mr. Morvillo who the attorney for the company would be?

A I don't know. I may have.

Q I show you Page 173 of the uncorrected proof which corresponds to Page 261 of the published version.

You notice in the book that you made Morris Winter a fee in connection with Natco?

A That is correct.

Q Was it $5,000, sir?

A That is correct.

Q And you say another $5,000 went to another attorney for helping on legal matters?

A I don't think Mr. Kerland got $5,000.

Q Was the other attorney Kerland?

A Yes.

Q Is there a reason you left Kerland's name out?

A I guess when I was taping I couldn't think of his name.

Q So 5,000 went to Winter --

A It wasn't 5,000.

Q Somewhat less than 5,000 to Kerland. $70,000 was left. What did you do with the 70,000?

A By this time when Schustek got the money back, Sammy Falgiano and all the mafia people and shylocks knew that the FBI was in the case and that the money was tied up in the Bahamas. They had no idea that the money that they were going to get paid back came from that $80,000 or $70,000. They assumed that I was going out and struggling to borrow the money from different people to start paying them back.

So, I sent Morris Winter to West Street to see Johnny Dio.

Q West Street was the lockup?

A Yes. To explain to Dio that he was going to lend me the first payment, I don't remember whether it was 25,000 or 35,000, and he was going to bring that to David Petillo to start the show that I was paying back and all the wise guys thought the $80,000 was still locked up in the Bahamas and I told the FBI and I told Mr. Morvillo that I wasn't going to pay the $70,000 at one time or the $80,000 at one time, I would be signing a death note. I would pay them 5,000 a week and 10,000 a week so they would think I was earning this money from other illegal deals or I was able to borrow this money to pay them back and that way I would save my life.

Q So Mr. Morvillo did know you were paying this money to the shylocks but the shylocks didn't know and that was to protect your own life that you didn't let him know?

A Correct.

Q I take it you told this to Mr. Morvillo before you actually got the 80,000?

I am trying to get things in a time frame.

A I am, too. My best recollection is that right before I got the $80,000, I told Mr. Morvillo -- I started to tell Mr. Morvillo about paying the shylocks and Mr. Morvillo cut me short and said to me, if you pay any debt that is not a debt of the company or Schustek or any of the lawyers, you will all be prosecuted.

Q Mr. Morvillo knew that you and Schustek had been involved together in the Natco deal? You didn't hide that from him that you and Schustek were partners in the Natco Merchandise Plus scheme?

A No.

Q Did you tell Mr. Morvillo Morris Winter's role in the Natco thing?

A I don't remember.

Q What did Morris Winter do?

A He got the $5,000 for going to West Street seeing Dio, for the putting on the act that saved my life, telling Dio he was lending me the money and bringing 25 or 30,000 to Petillo at the Shelton Health Club as the first payment and telling him that he was lending me the money. That is what he got the $5,000 for.

Q You told Morvillo you gave Winter his $5,000?

A No, I don't think I did.

Q When you say you told Morvillo you were going to pay this out in pieces so the wise guys wouldn't find out that you had obtained the Natco money -- is that right?

A Yes.

Q What was Morvillo's response to your statement that you were going to pay it out in pieces?

A I told you his response was, if the money was used for any other reason besides paying the debts of the company, he would personally make sure that Schustek, myself, anybody else that would be involved would be prosecuted.

Q This was after, was it not, that you told Morvillo that the object of the Natco Merchandise Plus fraud, was to loot money from the corporation; is that correct, when you confessed, when you bared your soul to him?

A I can't use those exact words.

Q In substance?

A In substance, yes.

Q When did irst tell Mr. Morvillo about Morris Winters' inv nt in any of these criminal enterprises?

A I don't remember the date. It was after I had made my first understanding with Mr. Morvillo and we met at the Regency Hotel.

Q Was that before the return of the Imperial indictment, sir?

A I don't know. I think it is very close.

Q You began cooperating -- you made your deal?

A I made my first deal before the Imperial indictment.

THE COURT: I would like to go back to the book. Page 261. It says "When we returned from the cruise," and there you are speaking about a cruise you took on the Queen Elizabeth II maiden voyage "When we returned from the cruise, I found that the $80,000 that had been in the Bahamas was now waiting for me. Somehow the U. S. Attorney's office had secretly arranged for the release of the money to prevent me from being killed by Sammy Feet."

What is the basis for that statement in the book?

THE WITNESS: The FBI had picked the money up in the Bahamas. The FBI transported by check the $80,000 back to New York. Schustek's attorney then made a demand for the $80,000. The $80,000 was released to Schustek's attorney. During this time I was on a cruise. Schustek went with Morris Winters to some bank in New York, I don't remember the name, deposited the $80,000 check and took out $79,500 or $79,000 in cash.

Winters then took 25 or $30,000 of that money and took it to the Shelton Club where he paid David Petillo and telling the wise guys and Dio and them that he was lending me that first payment and he did that before I came back from the cruise. When I came back, I went to Winters' apartment and he had in cash 40 or $45,000 of which Winters got a $5,000 legal fee, I took the balance which periodically over the next three, four or five or six weeks, I paid to the shylocks to pay off the remaining part of that obligation.

THE COURT: You retained Kerland before you went on that cruise?

THE WITNESS: Yes.

THE COURT: You insructed Winters to inform

Dioguardi before you went on that cruise?

THE WITNESS: Yes.

Q Can we get the date of this cruise? Do you recall when you left?

A No, I don't. It was the maiden voyage. I think it was sometime in February.

Q Was it January 30, 1971?

A It is possible. I would accept that.

Q And you returned on February 13, 1971, is that correct?

A 13th or 14th.

Q You testified previously -- if I show you the transcript --

A I accept it. We are within a day of each other.

Q February 13, 1971. When you returned, the 80,000 was waiting for you, right?

A Yes.

THE COURT: Is this statement in the book truthful? "Somehow the U. S. Attorney's office secretly arranged for the release of the money to keep me from being killed by Sammy Feet"?

THE WITNESS: I believe Mr. Renner in transposing the tapes, I believe that is his words rather than mine. I believe the tape probably says the money was there, I got the money to pay the people, the shylocks back. I don't know if any reference is made to that in the tapes. Maybe we should listen to the tapes.

MR. SILVERGLATE: If your Honor please, I have issued a subpoena for those tapes. The only trouble is, we have not been able to locate Mr. Renner to serve it, but there is an effort to get those tapes underway and I have informed the attorney for Doubleday we are seeking the tapes.

Q Shortly after you returned from the cruise, sir, did you go to Florida?

A It is possible.

Q Were you in Florida around February 14th of 1971 right after you got back from the cruise?

A I don't know.

Q Do you know what the first think you did was after you got back from the cruise?

A No.

Q Did you have a meeting with Morvillo after you got back from the cruise?

A I don't remember.

Q Do you recall having a meeting with Morvillo in Florida after you got back from the cruise?

A No.

Q Did you ever meet Morvillo in Florida?

A No, sir.

Q You made a statement earlier that the companies were reliable companies and not in Chapter XI.

A I said they weren't out of business yet.

Q Did you know at the time the $80,000 was turned over to Schustek -- pardon me, the lawyer, Mr. Kerland, did you know whether or not the corporations were in bankruptcy or whether petitions had been filed to place them into bankruptcy?

A I did not know.

Q Do you now know?

A Yes.

Q What do you know about that?

A They they must have filed a petition in bankruptcy or Chapter XI.

Q Did Mr. Morvillo ever ask you or tell you that either or both of these corporations were involved in bankrupty proceedings?

A No, sir.

Q Do you know a petition was filed for Natco in bankruptcy before you left on your cruise?

A You told me but I didn't know then.

Q After the $80,000 was turned over to Mr. Kerlands, did you discuss with Mr. Kerlands how those funds would be disposed of?

A No.

Q How did you find out that he deposited them?

A Through Mr. Winters.

Q What did Mr. Winters tell you?

A That he went with Schustek --

Q Who is "he"?

A Winters. That he went with Schustek to the bank, or maybe he said Kerlands went to the bank and they deposited the funds. They opened up an account and deposited the funds and the check was okayed that it was good or they had to wait a short period of time until it cleared and they took out approximately $79,5000 of the $80,000.

Q Do you know what day Mr. Kerlands got the check?

A No, I don't.

Q Do you know if it was deposited immediately?

A I would assume it was. I don't know the date.

THE COURT: Is this a federal check?

MR. SILVERGLATE: It is a check from a bank in Florida on the direction of Paradise Enterprises Limited which were told by the U. S. Attorney to issue it, a check in the amount of $79,995. There was a $5 collection fee. City National Bank of Miami Beach.

THE COURT: Issued to the order of Natco?

MR. SILVERGLATE: The order of Edward Kerlands' special, which I assume is some kind of client fund or joint account.

THE COURT: I understand.

Please continue.

Q So Mr. Kerlands took the check and deposited it in a Merchandise Plus account that he opened?

A I don't know what he did with it. I didn't know the check was made out to Edward Kerlands or anything about that.

Q Kerlands and Winters were in the same law office at the time?

A Yes.

Q They were acting in your behalf?

A They weren't partners. Kerlands was representing Schustek and Winters was representing me.

Q They were in the same office and they shared space?

A I believe so.

Q But they were acting at your direction?

A Yes.

Q In fact it was you who got Kerlands to represent Schustek?

A I asked Winters and Winters asked Kerlands.

Q Did you suggest to Mr. Morvillo that he turn the money over to Mr. Winters?

A I don't remember. I don't think so.

Q At some point did you report to Mr. Morvillo the disposition of the $80,000 when it was finally all spent?

A I don't remember having that discussion with him, no.

Q Did he ever ask you whether the money had been spent?

A I don't remember having that discussion with him.

Q But he did know you were going to piece it out rather than give it to the shylocks all at once?

A I believe so.

Q Do you recall testifying in any other case that you saved Natco and Merchandise Plus saving them $100,000 by tipping Morvillo off to the ongoing fraud?

A You read that to me before.

Q Is that the truth, sir? Do you now believe you saved the corporation $100,000 by reporting this to Mr.

Morvillo?

A Probably more because they couldn't continue with the scheme any more. They couldn't do anything else. Whatever you said to me before, they had other inventory and stuff -- I didn't know they had vehicles. You told me that. The fact that they couldn't continue with the scheme any more, they saved money. The company saved money.

Q At the time did you know about the vehicles?

A No.

Q At the time that you made the statement, sir, that you are reporting to Morvillo, save the corporations $100,000, were you telling the truth?

A Yes.

Q Do you still believe your actions in this matter saved the corporations $100,000?

A Yes. It went to pay debts of the corporation. It didn't go to Falgiano -- once the money was in the Bahamas, they thought the money was still in the Bahamas.

Q Mr. Hellerman, do you know how much was left after Mr. Schustek made his withdrawals from the account opened up by the corporation's attorney?

A No, I don't sir,

Q You said that $80,000 was deposited?

A Yes.

Q You said $79,500 was withdrawn right away?

A Yes.

THE COURT: You don't have to keep repeating it. I heard it once and that is really enough.

Q Do you know that there is 500 left? Do you know if any of that 500 was withdrawn?

A I don't know and I don't know how much they had in any other account or how much inventory they had left or anything like that.

Q Would it refresh your recollection if I suggested a few days later, 350 more was withdrawn?

A I don't know.

Q Then 125?

A Not that I remember or know of.

Q It wouldn't ring a bell if I told you there was $25 left in the account?

A No, sir. You are talking about the account that the $80,000 was put in?

Q That is correct.

A You are not talking about the accounts that they had -- I don't know what other bank, that they were running the business off, that Schustek was cashing the money every week.

Q Who was running the business?

A Schustek and the original owner.

Q Are you suggesting that after the $80,000 was taken out by Schustek, he continued running the business?

A No. I don't know if there was any money. You asked me if I knew there was any money left in those accounts.

Q You made a statement in the book and in prior testimony that you saved the company $100,000. For all you know you may have saved them much more because there may have been more money?

A There might have been.

Q Didb't you know this was the last $80,000 of liquid corporate funds?

A No. I didn't know how much inventory they had left. I didn't know what they had in the other account. I didn't know -- they were doing business theoretically every day.

Q Mr. Hellerman, didn't you loot that last $80,000 --

MR. WEINBERG: Your Honor --

MR. SILVERGLATE: I will strike that.

THE COURT: I think it is getting

repetitious.

MR. SILVERGLATE: One more question on this subject, your Honor.

Q You were in a tremendous hurry to get that $80,000 out, weren't you?

A You are talking when I came back?

Q Were you in a tremendous hurry to get the $80,000 out?

A Yes.

Q When you told Mr. Morvillo about the Natco bankruptcy, Merchandise Plus bankruptcy, did he take any notes?

A I don't know, sir.

Q Various times you did notice him taking notes when you did speak with him, didn'tyou?

A I don't remember, sir. You are talking about Natco?

Q Right now I am talking about Natco.

Do you remember Mr. Morvillo at any time during the period you were telling him about your swindles, do you remember him ever taking notes?

A Yes, sir.

Q How many occasions did he take notes?

A I don't know.

Q More than one?

A It is possible.

Q He took them by hand?

A Yes.

Q Did you ever see any of them?

A Yes.

Q Did he show you them in order for you to verify their accuracy?

A No. The once case I am thinking about, we called Mr. Edwards -- my attorneys were called to Mr. Morvillo's office after I made the deal and was told by Mr. Morvillo I had broken the deal again and that I committed another crime and I said what didn't I tell you about or what crime did I commit and he said Automated Information Systems. I looked at him and said I told you about that and he said to me Michael, you didn't tell me about it. Whatever I discussed with you or whatever notes I take or anything, I make a memorandum and I keep it in this drawer and all your stuff is in this drawer. I said I am telling you if you look in the drawer, you will find these notes because I remember you came up with Tom Noonan and met at a certain hotel in New York and one of my attorneys was present and Tom Doonan from the U. S. Attorney's office and Mr. Morvillo and took extensive notes that day.

Q Meticulous notes?

A I said extensive notes. He reached in his drawer and Mr. Wing was sitting in the room, Mr. Morvillo was sitting in the room,my two attorneys were sitting in the room and myself and Mr. Morvillo looked in and out came the notes. He was shocked that the notes were even there. He did not remember taking notes or having the meeting. He was shocked the notes were there.

Q How many pages of notes did you see on that occasion?

A I don't know.

Q How dou you know he was shocked they were there? Did he tell you?

A Everybody in the room he told he didn't remember.

Q He told you he didn't remember you telling him about Automated?

A Correct.

Q He reached into a drawer, pulled out the notes and what did he say?

A I told you he said any conversation that I had with him or any time he took notes or any time he made a memorandum or anything, it was kept in a drawer over here by his desk.

Q Then he was shcoked to find them there ?

A Yes.

Q Is it despite the fact he had put them there?

THE COURT: Don't argue with the witness. That is his testimony. He was shocked.

A He didn't remember.

Q Did he ever tape record interviews with you?

A No, not to my knowledge.

Q Do you know if anybody ever tape recorded -- anybody working for the governemnt ever tape recorded interviews with you?

A Not that Iknow of.

Q Did you read through thenotes that Mr. Morvillo showed you?

A No.

Q Did you leaf through them?

A No. He never touched them. He just said to Mr. Wing and my two attorneys he didn't remember they were there.

Q This meeting at which the notes were produced, you say Mr. Doonan?

A Mr. Noonan was there when Mr. Morvillo took the notes.

Q Where was that meeting held?

A In a hotel in New York.

Q Do you know the name of it?

A Yes. It is in the book?

Q The Berkshire.

A I didn't want to give the name. I don't know i they are still using it as a place to meet witnesses.

Q If they were, it is not now.

A The Berkshire Hotel.

Q Thomas Doonan was there, an FBI agent?

A He is an investigator.

Q Do you know what department he was assigned to?

A I think the ATtorney General's office, special investigator.

Q Was this book examined by the U. S. Marshal Service to make sure there were no secrets given away in i

A I don't think so.

Q Do you know if it was cleared for review by anybody in the government with an eye towards making certain nothing was revealed that was sensitive?

A I don't think so. I think Mr. Renner has enough experience in that field --

THE COURT: Who put you in touch with Mr. Renner?

THE WITNESS: I had read Mr. Renner's previous book which he wrote, My Life in the Mafia, which he helped Vinnie Terrezza write and I read that book and I called Mr. Renner.

THE COURT: On your own?

THE WITNESS: Yes.

Q You were at a dinner honoring Mr. Podgeton?

A No.

Q Do you know if Mr. Renner was?

A I believe he was.

Q Did he contact you before or after that dinner?

A After, I believe.

Q Have you ever read the forward to this book?

A Yes, I have.

Q Did Mr. Renner ever tell you that an Assistant U. S. ATtorney suggested he contact you?

A I don't think Mr. Renner says in the book that an Assistant U. S. Attorney told him to contact me.

Q Did Mr. Renner say that an Assistant U. S. Attorney told him to write a book about Michael Hellerman?

A Yes.

Q Did he tell you who the Assistant U. S. Attorney was?

A Not specifically.

Q Do you know who that was?

A No, I do not know who it was.

Q Has anybody told you who it was?

A No.

Q Do you know if it was one of those Assistant U. S. Attorneys that told you?

MR. WEINBERG: He said Renner told him.

THE COURT: I don't believe him.

Who was the fellow referred to in the preface?

THE WITNESS: I don't believe there was a fello referred to in the preface.

THE COURT: Would you like me to read it to you

THE WITNESS: It is not Morvillo.

THE COURT: I don't care who it is but you know

THE WITNESS: Your Honor, Mr. Renner wrote it t way. I don't believe any Assistant U. S. Attorney told Mr. Renner and you can ask Mr. Renner that. I believe the original preface that I saw which is not that preface said, and I will quote to the best of my memory, said, after speaking -- this is the way it was originally going to start: After speaking with Assistant U. S. Attorneys Ira Lee Sorkin, James Schreiber and Harold Maguire -- let me finish exactly the way Mr. Renner had started the book originally -- they told him that Michael Hellerman was the most important federal government witness since Joe Valanci and Vincent Terrezza.

The next time I read the book or part of the book or the preface, the copy you are holding in your hand is about two weeks ago.

I don't believe that any of the U. S. Attorneys told Mr. Renner that.

THE COURT: You think that is a lie on Mr. Renner's part?

THE WITNESS: A lie or exaggeration, whatever you call it. To my knowledge, the only Assistant U. S. Attorney that Mr. Renner spoke to, to my knowledge, was Mr. Sorkin for ten minutes or fifteen minutes the first time that I met Mr. Renner.

THE COURT: Next question.

Q Mr. Hellerman, did you discuss with anybody in the government the advisability of your writing a book in view of the fact that you had a changed identity?

A Yes.

Q Who did you speak with in the government on that subject?

A Practically -- when I decided to write the book and after I spoke to Mr. Renner while the book was being written, practically every Assistant in the case that

I would be on trial on or preparing for, they would ask me how the book was coming and in essence I would say I didn't know because I did the tapes and didn't hear from Mr. Renner or see Mr. Renner for a long period after that while the tapes were being transposed.

Q Mr. Hellerman, you said practically every attorney, every Assistant U. S. Attorney that you dealt with in these trials. That includes Mr. Harold Maguire?

A I wasn't writing the book when Mr. Maguire --

Q Can you give us the names of the Assistant U. S. Attorneys that you discussed the advisability of writing a book?

A I will give you the names, sure, but I don't think it was the advisability, just the fact I was writing a book.

Q Tell us who those are.

A Miss Neiman.

Q What is her first name?

A Shirah Neiman. John Wing. Mr. Cullen MacDonald Mr. Sorkin.

Q Ira Sorkin?

A Yes. Mr. Walker.

Q What is the first name?

A James, I think.

MR. WEINBERG: I believe it is John Walker. And others. Anybody if there was a half hour I was sitting in the U. S. Attorney's office and they would stop in and ask me how are you, Michael, how are things going or how is the book coming?

THE COURT: When did you begin working on the book?

THE WITNESS: Immediately after signing the retainer agreement with Doubleday. I would say late '74 or early '75.

THE COURT: Were you still testifying in late '74 and early '75?

THE WITNESS: I think I finished testifying, your Honor.

THE COURT: But you were still meeting these prosecutors regularly and discussing with them how your book was coming?

THE WITNESS: I didn't meet them for that particular reason. There were about 15 more cases that the government was going to bring to trial and I had been testifying for three of four years, I had been on the Program close to that amount of time and all I was doing was testifying. I couldn't get a job.

THE COURT: When did you last testify in a case?

THE WITNESS: It was the U. S. v. Weitzman case.

THE COURT: I think it was stated earlier it was 1975. Is that your recollection now?

THE WITNESS: I think so.

THE COURT: And you were working on the book at that time?

THE WITNESS: I think so.

THE COURT: Let's go forward, Mr. Silverglate.

MR. SILVERGLATE: I think I can pinpoint that date for your Honor.

Q The Weitzman trial, that was --

THE COURT: We are a little off the point.

If you want to state the date of the Weitzman trial.

Q That was the second Automated trial?

A Yes.

Q That was the first Automated Part 2, 73 Crim. 903 ?

MR. SILVERGLATE: Your Honor, the trial concluded in November, 1974.

Q Mr. Hellerman, you testified that the advance went to Je-Hel Corporation?

A Correct.

Q Have you had any of the use of that money?

A Me personally?

Q Yes.

A No.

Q Your wife has?

A Yes.

Q You are living with your wife, I take it?

THE COURT: I think I ruled earlier you were not going to go into anything about his pattern of living. It is certainly not relevant whether he is living with his wife or not.

That may affect his security.

MR. SILVERGLATE: He does some things in the book and he says that Renner says some things in the book andhe said that Renner got the tapes all mixed around and I think he said at one point Renner lied, so I wouldn't put too much emphasis on what the book says.

Let's find out what he testifies to under oath.

Q It was one of the reasons you wrote the book, was for the money?

A I guess I will answer that yes, but there is more to it. I will answer it, yes.

Q Have you done anything to promote the book yet, any appearances?

A I did not.

THE COURT: What was your motivation for writing the book, if you are suggesting by your last answer it was not entirely financial?

THE WITNESS: I felt there was a story to be told and I felt maybe other people could be hleped by the mistakes that I had made and I felt that the people that protected me and saved my life and kept me alive, I thought maybe the public and the world should know about these people that put their heart and soul into making this program work.

THE COURT: You think this book feflects favorably on them?

THE WITNESS: I intended to when I taped it.

THE COURT: And you didn't make any effort to check the tapes against the book?

THE WITNESS: Because of the security aspect of it, when I was told that the book or the manuscript, whatever you want to call it, the copy that he attorney has, I asked if I could read those things to see if it was correct and to see if it came out and they said said yes, you have "X" amount of days to get to New York to read them. I couldn't physically arrange security to get there and read the final thing. I read half of the book your HOnor has in his hand and I was very disappointed in many of the facts that are in the book and what I have read so far of it. I have not read the whole book, your Honor.

Q Mr. Hellerman, you indicated before you gave the U. S. Attorney information about Morris Winters, is that correct?

A In reference to what?

Q Concerning Morris Winters' involvement in criminal schemes?

Let's take one at a time.

Did you tell Mr. Morvillo at some point about Morris Winters' involvement in the Natco deal, in the Natco Merchandise deal?

A I don't think Mr. Winters committed a crime in that deal.

Q I didn't ask you for your conclusion about crimes.

Did you tell him about Winters' participation in Natco?

A Winters had no participation in Natco except as my attorney.

Q I understand that, and he got paid a fee, $5,000 for his work in that matter?

A Correct.

Q Did you tell Mr. Morvillo about the role of Morris Winters and the $5,000 fee paid to him?

A You mean about going down and paying the shylocks the first money?

Q I am asking you whther you told Mr. Morvillo anything about Morris Winters' role in the Natco matter.

A I believe I told Mr. Morvillo about Mr. Winters going down to pay the shylocks the original 25 or $30,000. I don't believe I told him how much fee Mr. Winters got, to the best of my recollection, but I believe I told him about going down to the Shelton Helath Club and paying the shylocks the first 25 or $30,000.

Q Did you tell Mr. Morvillo anything else about Mr. Winters' activities with respect to yourself? That is, Winters' relationship with you.

A Way before that.

Q When was it you told him?

A We had a meeting at a hotel in New York, the Regency.

Q Who is "we"?

A Mr. Winters, Mr. Morvillo, myself and I don't remember if it was again Mr. Doonan or somebody else in the U. S. ATtorney's office.

Q Was that after the return of the Imperial indictment, sir?

A I don't remember.

Q Was it around the time, do you think, of the Imperial indictment's return?

A I think it was after the Imperial indictment's return because Mr. Winters was going to represent me and I had made this understanding with the Government and I needed to sell somebody that I made this understanding with the government and I told Mr. Morvillo that Mr. Winters was going to represent me and that I had to tell him that I was a government informant and what I was doing for the government so somebody would know; and that is what I told Mr. Morvillo.

Q Did you at any time tell Mr. Morvillo about any of Mr. Winters' activities, forgetting for the time being whether you thought they were legal or illegal?

A I don't know.

Q At some point you thought, did you not, that you had an understanding Mr. Winters would not be prosecuted?

A Correct.

Q In order for you to have an understanding he would not be prosecuted, did you think that he had done something that would have warranted or might have warranted or might have subjected him to prosecution?

A I may not have, but Mr. Winters had been involved with me, he had bought stock if I recommended a stock in a company -- I forget the exact ones -- and he may have thought so. I may have not but he may have though so.

Q In fact he did some underwritings for you?

A Yes.

Q And you paid him with stock in some cases, did you not?

A Yes.

Q Did he underwrite Automated?

A I don't remember.

Q Computer Micro Data?

A No, he didn't do Computer and I don't think he did Automated.

Q At least one underwriting he got paid in stock?

A You mean that he would have got paid in stock for his legal services?

Q Yes.

A Yes.

Q Did he tell you that he feared he might be subject to criminal liability?

A No.

Q So you simply concluded because of his connection with you, there might be some danger to him, is that correct?

A Yes.

Q So you undertook, did you not, to discuss with Mr. Morvillo -- excuse me. You undertook to discuss with somebody working for the government the question of Morris, whether or not Morris Winters would be prosecuted?

A That is absolutely not so.

Q You had an understanding, though, he would not be prosecuted, yes or no?

A I can't answer that yes or no. I would like to explain.

Q Would you explain it?

A I said because of my situation, I wanted Mr. Morvillo to know that I was telling Mr. Winters that I was acting as a government informant and that he could rely on Mr. Winters if he had to tell him something about me or anything else and we met at the Regency Hotel and I so told Mr. Morvillo that.

I then assumed -- when I was told that Mr. Winters was getting indicted, I assumed that Mr. Winters should not get indicted and I so went to Mr. Morvillo and told him isn't Mr. Winters under my umbrella because of the fact he is helping me all this time and he knows I am an informant and he will go tell everybody what I am and Morvillo said I didn't promise him anything, he is not under your umbrella and he is getting indicted. If you don't want him to get indicted, you testify in Imperial and if I were to testify in Imperial - - at that point I didn't think I had to testify and it would have blown my cover and I didn't testify in the Imperial case and Mr. Winters got indicted.

Q And Mr. Morvillo told you he would not indict Winters if you testified in Imperial?

A Yes.

Q Do you know if Mr. Winters was indicted on the basis of any testimony or evidence you gave to the government?

A I don't know.

Q He was indicted in Belmont, is that right?

A I believe so.

Q Was he indicted anywhere else, any other case?

A Not that I know

Q Was there any discussion about whether he was subject to indictment in any other case?

A I don't know. Discussed with me?

Q Yes.

A No. The only discussion I had was when I went to Morvillo and said how could you indict him?

Q Did Mr. Morvillo tell you that if you testified in the Belmont case, he would not indict Winters in any other case?

A No. If I testified in Imperial.

Q I am asking another question. Did he make any other promise with respect to non-prosecution of Winters?

A Not that I remember.

Q I would like you to look at Page 267 of the published version, two-thirds of the way down the page, "The indictment of Winters really burned me up."

Read that to yourself.

You have read that paragraph. Do you recall now whether at the meeting with Mr. Morvillo, Mr. Winters told Mr. Morvillo about his own, Mr. Winters' actions?

A It doesn't say that here, counsel.

Q It says "I had told Winters to tell Morvillo what he knew about Belmont."

A Right, but that doesn't mean at that meeting.

Q Do you know whether Winters at some point informed Morvillo what he knew about Belmont?

A I assume he did. I wasn't present, and I don't know.

Q Do you know whether it was before or after Winters was indicted in Belmont?

A I don't know, either.

Q Were you under the impression that anything that Winters told Mr. Morvillo concerning Winters' own activities would not be used against him in a criminal proceeding?

A Can you repeat that question?

Q Were you under the impression prior to the return of the Belmont indictment, that anything that Mr. Winters told Mr. Morvillo about Winters' own activities would not be used against Winters in any criminal proceeding?

A Not because of that, no, I was under the impression he would not be indicted because of his loyalty to me and him helping me, not for anything that he told Mr. Morvillo.

Q Did you have a discussion with the United States Attorney on the subject of Winters, and I am referring to Whitney North Seymour, Jr.

A On Winters?

Q Did you have any discussion with Whitney North Seymour, Jr.?

1415

A Yes.

Q How many discussions?

A One.

Q When was that, sir?

A When I got the subpoena for Imperial to come to the grand jury. I went -- I got up to the grand jury and I told Morvillo how could he give me a subpoena in Imperial when I just got finished testifying in the Sweig Voloshian case and I was told that I wasn't going to be prosecuted, and he blew his top, Morvillo. He said you wait right here, and the next thing I know, he took me up to the U. S. Attorney's office and he walked in with Whitney North Seymour and he told me to repeat what I had said downstairs and Seymour said, told me that I completely misinterpreted him. That when I said I was under investigation in this office in another case and he said he knew it or don't worry about it or something like that, what Whitney North Seymour meant was that it wasn't going to affect my testimony in the Sweig - Voloshian case, not that I was going to be given any immunity.

Q So that was the second time you met Mr. Seymour?

A No, the one and only time . I testified for Mr. Seymour in the Sweig-Voloshian case.

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cont'd.

Q So this meeting when Mr. Morvillo took you to Mr. Seymour's office?

A It was after that.

Q That was the second time?

A Correct. It might have been the third time because I may have seen Mr. Seymour once or twice in preparation for the Sweig trial.

Q At the time you testified in the Belmont case, do you know whether Mr. Winters' case had been disposed of? Had he been sentenced?

A I didn't know.

Q Did you know ultimately what the outcome of the indictment was?

A The last I know is that Mr. Winters had pleaded guilty and was given a six-month sentence.

Q Was it suspended, do you know?

A I don't know.

Q Did you know that at the time you testified in Belmont?

A I don't think so, sir.

Q Was there any understanding that you believed you had with the government with respect to how hard or easy they would go on Winters in the Belmont case?

A Once he was indicted, I went to my attorneys and I told Mr. Edwards and Mr. Broderick that I thought he was given a raw deal and I thought he was under my umbrella and it was a very bad thing for me because he could go out and blow my cover and the best they could do or recommended, they recommended two attorneys for Mr. Winters to represent Mr. Winters.

Q "They" being your lawyers?

A Yes.

Q That was the Neiser firm?

A No. At that point it wasn't. At that point Mr. Broderick had left the Louis Neiser firm and he was attached to another firm.

Q What firm was that, sir?

A Forsythe, Decker, Murray and Broderick.

Q Did Morris Winters have any conversation with you concerning any understandings you may have had about him being indicted or not being indicted?

A Yes.

Q Could you tell us how many times he discussed that with you and give us the substance of each discussion.

A I can't do it that way.

Q Is there a way that is more convenient to you?

A Yes.

1418

During that period of time he was told he was going to get indicted, he asked me to go see Mr. Broderick and tell him what happened. He asked me to go see Mr. Morvillo. He practically asked me would I testify when he found out the only way he was not going to get indicted would be if I testified in Imperial. He practically asked me to testify in the Imperial case and I said to him I would do anything in the world for him but I couldn't blow my cover and testify in the Imperial case and I think he understood and we did everything we could to help him.

THE COURT: As soon as you come to a stopping point, I will recess for lunch.

Q But Mr. Morvillo was willing to have you blow cover at that point, wasn't he?

A Mr. Morvillo -- and he was eventually right. He explained to me many times that any kind of undercover work I did for the government in receipt of getting a break for a criminal act I did would only lead me back into trouble three months down the road, two months down the road or a month down the road and the only way I was going to be able to change my life and my life style and become a useful citizen would be to testify and at that point you can't go back. At that point you made a break with everything in your past and you can't go back and the only way he felt I would be ever able to become a useful citizen again would be to testify because then you can't go back any place. If you go to jail you get killed. If you walk the streets you get killed. You can't do anything. You spend the rest of you life looking over your shoulder and that is what I am doing now.

Q At the time the question arose whether or not you would testify in Imperial, you wanted to keep your cover, Mr. Morvillo was willing to let you blow your cover by testifying; is that correct?

A I just explained to you what Mr. Morvillo's thoughts were.

THE COURT: I think the answer to that is probably "Yes" based on his last answer.

We will resume at two o'clock. Everyone remain seated until the witness leaves.

[Luncheon recess.]

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AFTERNOON SESSION
2:15 P.M.

(In open court.)

MICHAEL HELLERMAN resumed.

DIRECT EXAMINATION (continued)

BY MR. SILVERGLATE:

THE COURT: Go right haed, Mr. Silverglate.

Q Mr. Hellerman, at some point you changed attorneys, did you not, sir, that is Morris Winters was relieved, was he not?

A Yes, sir.

Q Who did you retain?

A Phillips,Nizer, Benjamin, Krim & Ballon.

Q What lawyers in the Phillips,Nizer firm worked on your case, sir?

A That I was associated with up there or any of them that worked on it?

Q Yes.

A Mr. Nizer, Mr. Erms, Mr. Broderick and Tom Edwards, who wasn't a member of the firm but who was retaine by them.

Q Edwards was retained by Phillips, Nizer, but not associated with them?

A Correct.

Q When did you change lawyers, do you recall?

A I don't know the exact date. To the best of my recollection, it was before the Belmont arraignment.

Q If I told you that the Phillips, Nizer firm entered an appearance on your behalf in the Imperial case April 30, 1971, did that refresh your recollection?

A I will accept that, sir.

Q Do you know how long after you retained them they entered the appearance?

A No.

Q Who was the main lawyer who was working on your case in that firm, the one primarily in charge of your case?

A At what point?

Q All the way through.

THE COURT: Anything in that office, Mr. Nizer is in charge of.

Let's not waste time on this. Let's get down to facts.

Q At some point Mr. Broderick, now Judge Broderick, left the firm, did he not?

A Yes.

Q About how long after you retained the firm did he leave?

A A year.

Q He was still in the middle of representing you when he left?

A Yes.

Q Your case was not completed?

A Yes.

Q And you had Mr. Broderick, now Judge Broderick continuing to represent you?

A Yes.

Q And Mr. Edwards?

A Yes.

Q So that point when Mr. Broderick left the Phillips, Nizer firm, Phillips, Nizer no longer represented you

A Correct.

Q Did you make a fee agreement with the Phillips Nizer firm?

A Yes.

Q With whom in that firm did you discuss the question of fee?

A Mr. Nizer.

Q Anybody else other than Mr. Nizer?

A Present or discussed the agreement?

Q Was there anybody else in the Phillips, Nizer firm who at any time discussed with you the amount you would be paying for a fee, or that you would be charged with a fee?

A It's very difficult for me to answer that question yes or no. I would like to explain it.

Q I would be happy to have you explain it.

A I went to Phillips, Nizer because Marty Roth was friendly with, he said, Louis Nizer's stepson. I was looking for an attorney that was trusted by the Government and who I could tell the truth to and without letting the wise guys know that I was cooperating with the Government.

In order to do that, I had to make a suggestion of an attorney come from somebody among themselves. Marty Roth took the initiative on his own and said that he knew Nizer's stepson. I knew Vincent Broderick was a member of that firm, so I had Marty Roth take me to Nizer's office to make the introduction to me to meet Mr. Nizer.

THE COURT: You were already cooperating when you went there?

THE WITNESS: Yes.

A I did not tell Mr. Nizer I was cooperating with the Government. I entered into Mr. Nizer's office and Mr. Nizer called in Mr. Erms and Mr. Broderick, and at that point, Mr. Nizer told me what he would do in defending the case, not knowing I was already cooperating with the Government and had already had an understanding on the

Imperial indictment, and he, Mr. Nizer, then quoted me a retainer of $100,000 to represent me, for the firm Phillips, Nizer to represent me.

Q Is there any writing setting forth the $100,0 figure?

A Yes.

Q Sent by whom to whom?

A I believe by Mr. Nizer to me.

When I left the office, Mr. Roth had the impression that the fee to the Nizer firm, the retainer fee was $100,000 and he so spread that word in the street to the wise guys.

I asked Mr. Morvillo if he would call Mr. Broderick and tell Mr. Broderick that I was going to call him and explain to Mr. Broderick what our understanding wa as far as my pleading in Imperial and my not testifying i Imperial, and not blowing my cover, and explain that to Mr. Broderick.

I got a call from Mr. Broderick asking me to come to his office. When I came to his office, Mr. Edwar was there, and I explained to Mr. Broderick what the situa tion was and I said, "You know, Mr. Nizer asked $100,000 retainer and I don't know what to do about it now."

He said he was sorry he didn't know the stor before I had got in to Mr. Nizer because even if I go tell Mr. Nizer the truth, he is not going to believe I came there for Vince Broderick, he will believe I came there for him and it will be a messy situation.

I said I think I should tell him.

We left Mr.Broderick's office, Mr.Edwards, Mr. Broderick and myself went in to Mr. Nizer's office and I told Mr. Nizer that I already had an understanding with the Government and I didn't tell him that before because Marty Roth was sitting there, and he said my interest still has to be protected and he lowered my retainer from $100,000 to $50,000.

Q You say you selected the Nizer firm in part at least because Mr.Broderick was a member of that firm?

A Not in part. Specifically because Mr. Broderick was with that firm.

THE COURT: Do I understand that you said Mr. Roth recommended that firm?

THE WITNESS: That is right.

THE COURT: Did you go there because Mr. Roth recommended it?

THE WITNESS: I let Mr. Roth lead me there knowing Mr.Broderick was a member of that firm.

THE COURT: The original suggestion came from

Roth?

THE WITNESS: We had discussed many firms and he said how about the Nizer firm, and I said that is good.

Q How did you know Judge Broderick?

THE COURT: He wasn't a Judge then.

A He was a former Police Commissioner, a former U. S. Attorney in the Southern District, and he was truste and respected by the United States Attorney's office.

Q Did you know he was respected and trusted specifically by Mr. Morvillo?

A Mr. Morvillo told me he respected and trusted Mr. Broderick thoroughly.

Q Did he tell you that before or after you retained Broderick?

A We discussed many attorneys. Without mentioni a name, I said it can't be because his firm is involved in representing another wise guy and I am scared it would out.

Q That was Lauritano & Schlacter?

A No. Marty Roth suggested Nizer's firm and I said how about it, because Broderick is there, and he sai yes.

Q Did Morvillo tell you he had a good relationsh with Broderick?

A Yes.

THE COURT: This is before you retained the firm?

THE WITNESS: Yes.

Q Would it be fair to say, Mr. Hellerman, your selection of Mr. Broderick as your lawyer was cleared with Mr. Morvillo?

THE COURT: He doesn't have to draw a conclusion. He told he had a discussion and I will take his testimony as to what he said.

Q Did you at that point discuss with Mr. Morvillo the issue of a fee, legal fee?

A Yes.

Q Will you tell us the contents of that discussion?

A I told Mr.Morvillo -- Mr. Nizer had asked me for $100,000 retain --

Q One moment.

My question was, before you retained the Broderick-Nizer firm.

A I never gave him the money.

Q After you discussed about the firm, you came back and told Mr.Morvillo?

A Right.

Q What did you tell him about the 100,000?

A I told him to please call Mr. Broderick and explain to him that we already had an understanding and I was retaining the firm because of Mr. Broderick because I didn't want the wise guys to know that I had made this deal and it wouldn't look good, and there really wasn't going to be much legal work to be done, and I told you befor I went back and saw Mr. Broderick with Mr. Edwards present, and they didn't know whether we should tell Mr. Nizer or not, and we eventually did, and the fee was reduced to $50,000.

Q Do you happen to have the letter in which the $100,000 fee was set forth?

A No.

Q But it was signed by Mr. Nizer?

A I think so. I don't know for sure. Maybe Mr Broderick, maybe Mr. Broderick, Mr.Erms. I don't know.

Q When it was reduced to 50,000, was a new letter sent to you?

A I don't know, sir. It might have been.

Q Did you discuss with Mr.Broderick, as distinguished from Mr. Nizer, the amount of the fee?

A Yes, I did.

Q What did you tell him about the fee?

A We told each other. I said to him -- he said t me, "I am sorry I didn't know about this before the meeting with Nizer." When I had gone to the meeting with Mr. Nizer and Mr. Roth and Mr. Nizer had called in Mr. Erms and Mr.Broderick, Mr. Broderick did not yet know that the reason I was coming to that firm -- they thought sitting at that meeting I was going to fight the Imperial case. They didn't know I had made an understanding with the Government previously to going up there, and I asked Mr. Morvillo to call Mr. Broderick and explain to him the deal I had made with the Government, and what our understanding was.

Q Did you explain to Mr. Broderick your deal with the Government?

A Yes.

Q Nevertheless, you asked Mr.Morvillo also to explain it?

A I asked Mr. Morvillo to explain before I ever went to see Mr.Broderick.

Q When you explained to Mr. Broderick your cooperation with the Government, did you tell him that you would be cooperating with the Government in a number of cases?

A My original deal with the U. S. Attorney's office was, and this is what I told Mr. Broderick, that I would give all the information that Mr. Morvillo wanted or needed in the Imperial case and the other cases that he had under investigation at the time which I think was five, and I would not have to testify in any of the cases and I would plead guilty to one count in the Imperial case, and that was my understanding with Mr. Morvillo when I made it, and I so told Mr. Broderick.

Q Was part of that understanding you would continue to feed information to the Government?

A I said yes.

Q Did Mr. Broderick tell you that if he had known that Mr. Morvillo was on the other side, he would have done the case for $500 out of friendship to Morvillo?

A No. Mr. Broderick said if he had known that all that was entailed was that I was using the firm just as a cover, that he did not know at that point I was in ot lgal problems. We are talking about the first time I met Mr. Broderick; that it would have been a very nominal charge if I had come to him directly, perhaps $500, not $100,000 or $50,000.

Q I show you page 177 of the uncorrected proof Wall Street Swindler. It is towards the beginning of Chapter 16.

THE COURT: About 267.

MR. SILVERGLATE: 266, your Honor. The

paragraph reading "At the meeting I laid out the entire deal to Broderick".

Q Would you read that, sir.

Does that refresh your recollection about what Mr.Broderick said about his friendship for Morvillo?

A No.

Q Did Broderick tell you about the friendship for Morvillo?

A They told me they each knew each other and that they had great admiration for each other.

Q Did Mr. Broderick ever tell you anything to the effect that out of friendship for Morvillo, he would have or he might have or he might lower his fee or anything like that?

A No, that was not the intent. I see how it is written and what is in the book. That was not the intent of what I taped into the tape.

Q You did tape, though, on this subject?

A Everything that has been written there has been taped.

Q To the best of your knowledge, Mr. Renner has those tapes?

A Yes, sir.

Q When you had Mr. Morvillo telephone Mr.

Broderick, did you ask Mr. Morvillo to tell Mr. [illegible]derick anything else other than the fact you were cooperating?

A I don't remember. I told him to tell him the whole story. If you could refresh my memory.

Q YOu had already told Mr. Broderick you were cooperating. Was there anything else? Was the only reaso for your asking Mr. Morvillo to call Mr. Broderick, you wanted to reconfirm for Mr. Broderick what you had already told Mr. Broderick?

A I didn't tell Mr. [illegible]derick until Mr. Morvillo called him. Mr. Morvillo called him first. I explained that to you before, sir.

Q Was there any reason, any special reason why you had Mr. Morvillo make the first contact to Mr. Broderic

A Because I didn't know Mr. Broderick except for the meeting with Mr. Nizer. Mr. Morvillo, out of his great respect for Mr. Broderick -- I asked Mr. Morvillo to call him and tell him the understanding we had and I got a call from Mr. Broderick a short time after that that Mr. Morvillo had been in touch with him.

Q Did Mr. Broderick tell you what Mr. Morvillo told him?

A No. I told him what the deal was, the understanding, and he confirmed that was the understanding that

I had.

Q How much of a fee did you pay the Nizer firm?

A Give or take a couple of thousand dollars on each side, I would say the Nizer firm got approximately $20,000.

Q Did you then pay further fees to Mr. Broderick after he left the firm?

A Yes, I did, sir.

Q Page 266 of the published version of the book, the paragraph beginning -- this is a conversation with Mr. Morvillo "Within an hour we were talking and I explained to him what Nizer was planning and the fees that were involved."

Would you read a couple of paragraphs down from that, please.

A All right.

Q Did you say to Mr. Morvillo, "How the hell can I raise that much anyway? Can't you talk to Broderick and explain what is going on and get the fee at a reasonable level?"

Did you say that to him?

A When you listen to the tape, you will see how it was transposed from the tape to the written language.

THE COURT: Listen to the question, and forget the tape.

What was the substance of what you said to Mr. Morvillo?

A When he explained what kind of deal I made to Mr. Broderick, so Mr. Broderick would know how much work was involved, I will get a reasonable fee.

Q In the book you said Morvillo said he would try.

A He said he would call Mr. Broderick, and he did call Mr. Broderick.

Q Did you tell Mr.Morvillo afterwards that the fee was in fact reduced?

A I believe so.

Q Did you thank him for his efforts? Did you thank him for calling Mr. Broderick?

A I don't remember if I thanked him or didn't thank him.

Q Did he say anything to you when he reported the fee had been reduced?

A Without the exact words, but the sum and substance of it was that when I told him that Nizer had reduced the fee to 50,000, we both smirked because it wasn't like a reduction. I know there is a difference between 100 and 50, but what I expected to pay or what I expected for the work I thought would be entailed, it was a still ridiculous high figure, and I felt he felt the same way without saying anything.

Q Mr. Hellerman, you are familiar, are you not, with the Banking Secrecy Laws of the Bahamas?

A Yes.

Q Are you familiar with the Banking Secrecy Laws of Switzerland?

A Yes.

Q When did you become familiar with those Banking Secrecy Laws?

A I can't tell you the exact date. I guess when I started my sindles.

Q When would that have been, sir, what year?

A '69, '68.

Q Where did you learn about these laws?

A I didn't learn it in a specific place. Just fro hanging around with swindlers and thieves and wise guys. I just picked it up.

Q How many times have you been in Switzerland, sir?

A Once.

Q How many times have you been in the Bahamas?

A Many, many times.

Q When was the first time you went to the Bahamas?

Did you go while you were in college?

A I don't remember if I went while I was in college.

Q Do you recall the first time you were arraigned in this court? Would it have been the Imperial case?

A Yes.

Q And you were arraigned in front of what Judge?

A Judge Cooper, I believe.

Q Do you remember the conditions of your bail being set?

A Continental United States, if I remember correctly.

Q Continental United States. Did you surrender your passport, sir?

A Yes.

Q Upon order of the Court?

A I don't remember if it was order of the Court. I remember giving it to Mr.Broderick to bring down.

Q Did you at some point seek to get an enlargement of the conditions of bail?

A I don't know.

Q Did you at some point ask your lawyer to try to get you permission to travel beyond the continental United States?

A Yes.

Q When did you ask for such permission?

A Approximately July or August of 1972 when I knew that I would have to change my deal with the Government and testify and knew I would have to become a relocated witness. I knew I would have to change my identity. Not knowing where I would relocate myself to or ask the Government to relocate myself to, I asked Mr. Broderick if he thought I could go to Europe with my wife and see and check out different parts of Europe as far as relocating, and Mr. Broderick, I believe, made a motion to Judge Lasker and I believe Judge Lasker said that I could go if I gave him an itinerary of where we were going before I left and that is what happened.

Q Do you recall when Mr. Broderick made that motion?

A I would assume in June or July of '72, sir. I believe I signed the final agreement with the Government October of '72, and it was right before I signed the final agreement.

Q If I told you that Mr.Broderick made the motion August 3, 1972, would that be about right?

A I just testified to that, sir.

Q How soon after that did you leave for Europe?

A I don't know exactly. I would say I left approximately August 15 or August 20, something like that.

Q How long a trip was it, sir?

A The original itinerary was 14 days -- 21 days, but my mother and my wife left previously ahead of me. They went to London as their first stop and I joined them five days later, eight days later -- I don't know exactly when. I met them in Naples and we continued the trip. They went home from Geneva, Switzerland, and I went back to London and stayed another four or five or eight days.

Q I take it you told Mr. Broderick you were going to find a new place to live?

A One of the things, the primary thing was to go find a new place to live besides have a vacation.

Q Any other reason for going?

A No.

Q So your mother went, and her name was what?

A Jean.

Q Jean Hellerman?

A Yes.

Q Your wife Joanne?

A Marianne.

Q Your brother-in-law, did he go?

A They went first and when I left, my brother-in-law, Joel Goldberg, and my girl friend Joan Grossman, went with me.

Q Joan Grossman. Was she also known as Joan Green?

A Yes. She was not known then as Joan Green. As far as the books is concerned, it was to protect her identity.

Q So the reference in the book to Joan Green is actually Joan Grossman, the same person.

Who knew the itinerary of the trip other than the people who went?

A Judge Lasker, Mr.Broderick and my sister, who made up the trip.

Q What about the probation office, were they notified?

THE COURT: I don't think we had pretrial service examiners in those years. That is a new innovation.

Let's move along, please.

Q Did Judge Lasker know you were going to Switzerland?

A Yes, sir.

Q Were you in Switzerland with your wife?

A Yes.

Q She was there too?

A Yes.

Q And your brother-in-law?

A No.

Q He did not go to Switzerland?

A No.

Q Did Joan Grossman go to Switzerland?

A No.

Q They didn't go all together?

A What do you mean?

Q Joan Grossman didn't travel to Switzerland with your wife?

THE COURT: Look, we are not interested in his marital affairs. They all went to Switzerland, you have that in the record. Let's keep moving along. I assume he kept them separated as best he could.

Q Did you have any occasion in Switzerland to walk into a bank?

A No, sir.

Q Did you have any occasion to telephone anybody at a bank?

A No.

Q Did you have any occasion to inquire about banking secrecy laws in Switzerland while you were there?

A No. My sister had to wire me $500 because I ran out of money and I think it was an American Express office. I don't know if it was an American Express office or a bank or where it was I went to pick up the $500 she wired from Long Island to me, and that is where I cashed the $500. That is the only time or only occasion I had to walk into any bank or anything in Switzerland.

Q Have you spoken to your sister in the last three days?

A Yes.

Q Did she tell you she had received a subpoena?

A Yes.

Q Did she tell you she had spoken to me on the phone?

A Yes, she did.

Q Did she tell you that she told me she had sent you $500?

A Yes, she did.

Q What else did she tell you she told me?

A That she was scared to come here and she was scared somebody would hurt her or something.

Q did she tell you she threatened to blow my whole case if I called her as a witness? Did she use those words?

A She said she didn't think she would make a good witness for you because she was going to get the $500 receipt that she sent me in Switzerland.

Q She said that would show you didn't have money in Switzerland?

A Yes.

Q When did you arrange for her to send you the $500, was it before you left or while you were in Europe?

A While I was in Europe.

Q How did you arrange it, did you send her a message?

A I am trying to think. I don't know if I called.

Q Would you have called collect?

A I might have, I don't know. I don't know how.

Q But she wired the money to you at an American Express office?

A She also wired me a ticket in London. She also changed my ticket because I went back to London and in London she wired me a ticket, prepaid ticket to get home from London.

Q Is it possible that you made arrangements befor you left?

A Absolutely not, sir.

Q Mr. Hellerman, you left from what airport?

A Kennedy Airport.

Q Who was with you at your departure?

A Joan Grossman, my brother-in-law, Joel Goldfarb.

Q Your mother and wife had left earlier, is that correct?

A Yes.

Q How many days earlier?

A Four, five, six, eight. I don't know the exact amount. Approximately a week earlier.

Q Was there an incident at Kennedy Airport before you left?

A Yes.

Q That was on the date you ultimately did take off?

A No, was the night before.

Q Could you please tell us what that incident was?

THE COURT: Do you go to the airport the night before you take off?

THE WITNESS: They didn't allow us to take off. We went to catch a 9:30 plane. We waited in the lounge and they take the bus out and we got to the bus. I saw Joe Glickman who I had been involved in a stock swindle with and two or three detectives from the New YOrk City Police Force or Kennedy Airport Detective Squad.

Q Could it have been the New YOrk Port Authority police?

A It could have. They stopped me and said you can't leave. I said, "What do you mean, we are going, everybody is here."

He said they could go, pointing to Goldfarb and to Joanie, but I can't go. I said, "Why can't I go", and they said Mr. Lichtman said that you robbed him for $250,000 and you are taking it to Switzerland with you.

Q Would you please identify Mr. Lichtman?

A I did. He was a gentleman I participated in a stock swindle with, who I was in stock deals with.

Neither of them decided to go without me. We left and I told the policeman to search me, I have what I had in my pocket which was approximately $2500, and I sai search me, and when I got off the plane, Lichtman said, "You promised to run my stock to $5 and you didn't, and you left me holding the bag, that is why I got you off the plan and one of the detectives turned around -- becahse he hadn't signed a complaint yet -- and one of the detectives turned around and said to Lichtman, "You know, we are not a collection agency," and we got back to the station, then they came in and said to me I didn't have permission to leave, that Lichtman told them I was under a Federal indictment and I said to call the FBI or call Judge Lasker, or whoever you want, I have permission to leave, and I have my passport back to leave.

I tried to call Mr. Broderick, Mr. Edwards, who were both on vacation, and somehow the Port Authority police or New York City detectives, whoever they were, came back and said they had checked it out and that I did have permission to leave, and I went with Lichtman and I had a cup of coffee with him and tried to quiet him and went back to Joanie's apartment, went to sleep, got up the next morning and made the 7:00 or 8:00 or 9:30 plane to London.

Q At this time you knew you were going to be testifying in the Belmont case, did you?

A No, sir. The deal was not signed until October. Mr. Broderick and Mr. Edwards were negotiating with the Government on my behalf.

Q Were you concerned at that time as to how you were going to make a living in the future?

A Of course.

Q Were you concerned about how you will be able to support your family?

A Of course.

Q I am reading from page 189 of the uncorrected proof of the book in which it says: "To a swindler like me, there could be only one answer to all these problems. I had to set up deals that would bring in a ton of money fast, money that I could salt away secretly in hidden places that my family could draw on without suspicion."

Did you dictate at any time those words into a tape?

A I don't know the context in which you are saying it. You are taking a sentence out without letting me see what is after it or before it.

THE COURT: Is this in the final version of the book?

MR. SILVERGLATE: We are looking for it now, your Honor.

Page 285, your Honor.

Q I show you page 285, and you could look at the context.

A All right.

Q Look at page 310 on the top where you indicate when you came back you told Mr. Broderick you just robbed more than $250,000.

A I told Mr. Edwards, I didn't tell Mr. Broderick.

Q Had you just robbed $250,000?

A Yes.

Q Was one of the reasons you participated in swindles after your first verbal agreement with Mr. Morvillo, that you wanted to salt away money in secret accounts so your family would be supported?

A No,sir, I wanted to make a lot of money. I wanted -- and I said here -- I had no scruples how I did it, and I just wanted to make a lot of money. When I made it, I called and the justice of it was, when I made it until the time I was sentenced, every dime was spent paying shylocks back and creditors back, and just staying alive.

Q YOu also wanted to hide the money, didn't you?

A I didn't hide it. If I wanted to hide it, sure I would like to have had the money.

Q Did you or did you not tell Mr. Renner that you wanted to earn a lot of money and salt it away in secret accounts?

A I don't remember. You will have to listen to the tapes, sir. You are playing on words.

Q Is it true you wanted to salt money away in secret accounts at that point in time?

A No, sir. I wanted to have money. Your intent of a secret account --

THE COURT: It says "in hidden places" in the book, and you ought to stick with the book.

Q Is it true you wanted to salt money away in hidden places?

A I would have liked to.

Q Did you in fact salt money away in hidden places?

A Unfortunately, no.

Q Do you recall testifying in the First Automated case, Part 2, the one involving Mr. Weisman as a defendant?

A I testified in it, yes.

Q 73 Cr. 903. Do you recall Judge Metzner, who was the Judge in that case -- is that correct?

A I believe so.

Q Ira Sorkin was the prosecutor?

A Yes -- no, sir. Mr. Walker was the prosecutor, I believe.

Q I show you a transcript showing Mr. Sorkin as the prosecutor --

THE COURT: Don't worry, make your representatio to the Court. If that is what the court records show, I will take judicial notice of it. Ask him if he recalls being asked this question and giving this answer.

Q Do you recall a colloquy between Judge Metzner and Mr. Sorkin concerning your trip to Switzerland?

A Not offhand, sir.

Q Do you recall Mr. Sorkin telling Judge Metzner that you went to Switzerland?

A Not offhand, sir.

Q Do you recall Judge Metzner saying how about getting a numbered Swiss bank account?

A I don't, sir.

THE COURT: Saying that to the witness?

MR. SILVERGLATE: That is what I would like to know.

THE COURT: Just read from the transcript the way it appears in the transcript. Don't change it around.

Q "Mr. Sorkin: He was not in custody at the time. He went to Switzerland. That has been brought up before. I can see that part of the trip to Switzerland was a vacation. On the other hand, an equal part of the trip to Switzerland was to find a place for relocation because of the threats upon his life.

"The Court: How about getting a numbered Swiss bank account?

"Mr. Huff: It is relocating closer to his funds.

"Mr. Panzer: That is going to be one of my questions.

"The Court: It is perfectly obvious, isn't it, Mr. Sorkin?

"Mr.Sorkin: It is, and I have no objection to bringing it up. We sincerely believe one of the reasons is to get out of the United States to look for a place in Europe.

"The Court: Sure, that is where his money would be."

Do you recall that interchange at that trial?

A No, I do not, sir.

THE COURT: Does the record show that was in his presence?

MR. SILVERGLATE: It doesn't.

THE COURT: Show it to Mr. Weinberg.

Some of these discussions take place at the side bar and they are not necessarily in the presence of a witness.

MR. SILVERGLATE: Many of the side bars I know the witness was there.

THE COURT: Let's see what the record shows.

MR.WEINBERG: There doesn't appear to be any indication in the record.

MR. SILVERGLATE: Your Honor, I phoned Mr. Sorkin to ask him that precise question. He didn't remember that colloquy at all, so he was of no help to me.

I take it that transcript seciton is part of the Court record.

THE COURT: Any part of the Court record my attention is directed to, I can take notice of, of any trial he was in.

Q Mr. Hellerman, you say you had $2500 in cash on you when you were at the airport?

A Approximately, sir.

Q How much did this trip cost, the European trip, for yourself and all the members of your party?

A I think the hotels and cars and everything for my mother, my wife and myself, came to approximately twenty-one or $2200 a person. That means mine would be twenty-two or $2300. My brother-in-law just went to Rome to look at -- he just went to Rome and returned and Jonie, I guess, would cost the same amount, maybe a few dollars more because hers was not done through my sister on a package, she was just done haphazardly.

Q Did you previously testify thatit cost $15,000 to whole trip?

A I would say approximately.

Q Is that a fair estimate?

A Yes, very fair.

Q And that you paid for everybody?

A Everybody, and I don't know if I paid for my brother-in-law back and forth to Rome, but everybody else, and possibly my brother-in-law too.

Q Where did you get the funds to pay for that trip?

A Joe Lichtman gave me eight or nine thousand dollars right before my mothe and Marianne left, my wife left, because I gave them each $2000 apiece when they left and paid my sister for the trip that she had booked, and I bought the tickets, Joe Lichtman bought them their tickets on his American Express card before they left. Their portion was taken care of from that and mine he gave me -- I odn't remember if he bought my ticket too or I got that from my sister and the $2500 I had in cash, plus the $500 my sister wired me plus the extra ticket she left for me in London to get back from London.

Q When you told Mr Broderick you were sitting on a quarter of a million dollars, was that true?

A Yes. Approximately.

Q What was that money from?

A Computer Microdata swindle. The last two or three --

Q Lichtman was involved in Computer Microdata?

A No, Minute Approved Credit.

Q He was an officer?

A Yes.

Q That $250,000 that you told Mr. Broderick about--

A Mr. Edwards.

Q Where was the money when you told Mr. Edwards about it?

A Some in my house, some in my pocket, some in a vault, all over.

Q And you told Edwards about this quarter of a million dollars after you returned from Switzerland?

A No.

Q Before you left?

A Before I left.

Q So just before you left for Switzerland --

A Not just before. Three weeks.

Q So three weeks before you left for Switzerland, you had a quarter of a million dollars in cash, some of it in vaults, some of it on you. Did you still have the quarter of a million dollars left when you went away to Switzerland?

A No.

Q How much was left by the time you went to Switzerland?

A In round figures, 75,000.

Q So you had 75,000 --

A I said in round figures.

Q What happened to the rest of it?

A I used it to pay back shylocks. I used it to stay alive every week when I used to come to the house, that I would on this debt or that debt, and I made a list, I don't know where it is, but I made a list for Mr. Edwards of every penny of what happened to that $250,000.

Q Did your mother have any money that you knew about at this time?

A What do you mean?

Q In the period from three weeks before you left for Europe to the day you left, do you know if there was any money in your mother's account?

A I know what my mother had as assets. My father left it to her.

Q Besides what your father left, you used your mother in your manipulations?

A In the early days -- not in manipulations, but I had power of attorney over my mother's account.

Q That was the account at the First Israel Bank?

A Yes.

Q And you deposited money or withdrew it from the account yourself?

A Yes, I did.

Q The time you told Mr. Edwards that you had a quarter of a million dollars, did you have any money under you control in your mother's account?

A By that time I had no more power of attorney in my mother's account.

Q That wasn't my question. Did you have any of your money in her accounts?

A No.

Q Did she have any money in her account that you knew about it?

A Not that I knew about, except her normal checking account.

Q What about your wife, do you know if she had any money?

A IN what?

Q I am talking about amounts in excess of $10,000.

A Not to my knowledge, sir.

Q Did you have any money in your sister's account or your brother-in-law's account?

A No,sir.

Q Did you have any money in anybody else's account?

A No.

Q In anybody else's house?

A No.

Q Anybody else's vault?

A No, sir.

Q Mr. Hellerman, you said you had only 75,000 left, the rest was dissipated in two weeks, yet with 75,000 you nevertheless had Mr. Lichtman charge some of the tickets to Switzerland?

A Correct.

Q And when you left the United States, the 75,000 was in the United States, is that what you are saying?

A Yes.

Q When you were in Europe, you asked your sister to wire you 500?

A Yes.

Q Did you tell her to take the 500 from your 75,0 or was it your sister's 500?

A My sister's.

Q Despite the fact you had 75,000, you took 500 from your sister?

A Correct. I was in Switzerland or Europe, how was I going to get it.

Q You were in Switzerland.

A That is where I got the 500.

Q Mr. Hellerman, did the police search you when you --

A Yes.

Q They searched your person?

A Yes.

Q They searched your baggage?

A To the best of my recollection, yes.

THE COURT: When?

THE WITNESS: The night that they wouldn't let me go to Europe, the first night.

THE COURT: The Port Authority police searched your belongings?

THE WITNESS: Yes. I assume so.. I wasn't there. They searched me and I assume they searched -- I don't know. I shouldn't answer that. I don't know if they searched my belongings.

THE COURT: Were your suitcases already checked on the plane when the police stopped you?

THE WITNESS: Yes.

THE COURT: Did the suitcases go on the plane?

THE WITNESS: Yes.

Q Did you ever tell Martin Roth you had over $300,000 secreted in your baggage at that time?

A No, I did not.

Q Did you ever tell anybody that you had cash secreted?

A No, sir.

Q Did you ever tell Martin Roth you had any amoun
of cash in your luggage at the time of that attempt to leave
Kennedy Airport?

A Absolutely not.

Q Did you ever tell anybody you had any money
with you on that trip above and beyond the $2500?

A Absolutely not.

Q Did you have any cash leaving the country on
the person of your mother,and when I say cash, I mean in
excess of $10,000?

A Absolutely not.

Q Did your wife take any cash with her?

A No.

Q What about your brother-in-law?

A Absolutely no.

Q What about bullion, anything like that?

A No, absolutely not.

Q What about checks?

A Absolutely not.

Q What about your girl friend Joan?

A Absolutely not.

Q What was the reason, Mr. Hellerman, that your
wife and mother left before you left?

A I was in the middle of a swindle and I couldn't finish it in time.

Q Do you know if they were searched?

A I don't know.

Q And you don't know if your baggage was searched, only your person was searched?

A That is right.

Q After you got the $500 in Switzerland, sir, you then had five glorious days in London?

A Yes.

Q With Joan?

A Yes.

Q How did you finance that?

A Sybil, my sister, called the Churchill, and made a reservation at the Churchill for me. She sent me the extra ticket.

MR. SILVERGLATE: Your Honor, somebody just came into the courtroom.

THE COURT: State your name.

MS. OFFARD: Jean Offard.

MR. SILVERGLATE: I take it there is now a sequestration order that people going to be witnesses are not to be in the courtroom.

THE COURT: I made an exception for Mr.

Partington. The Government did not ask for Mr. Pollack to be sequestered. If this lady is a witness and any of you want to make an application.

MS. OFFARD: I am not a witness.

MR. SILVERGLATE: I would generally like t make an application that we sequester witnesses for both sides.

THE COURT: Any other witnesses who are now parties to this proceeding with the possible exception o Mr. Partington? I see none.

Q Mr. Hellerman, you were telling us how you financed the five glorious days in London.

A I just told you. I stayed at the Churchill and I don't think it was five days, I think it was three Whatever it was.

Q Do you know if your sister wired money to t hotel?

A I don't know if she got the bill or how it worked.

Q Did you finance it in part by the $500 that sister sent you?

A I am sure I spent some of the money.

Q Mr. Hellerman, before you left on the trip, you paid Mr. Lichtman $26,000 in cash, did you not?

A No, sir, that is a lie.

Q I show you page 309 of the book, the second paragraph or the first full paragraph. Would you look at that, please.

A I see it.

Q That last sentence of that paragraph: "In the meantime, to get Lichtman off my back, I paid him $26,000."

Is that true or false?

A False.

THE COURT: It is not true what it says in the book?

THE WITNESS: No, sir.

THE COURT: What is the fact with respect to the payment?

THE WITNESS: I went to Rome and when I got to Rome, I checked into the Hilton in Rome, with my brother-in-law and Joanie, and I called Ivan Ezrine who was Joanie's brother-in-law,,and a lawyer, and who had introduced me to Lichtman, and I said to him what is happening and he said Lichtman could have issued a fugitive warrant for me, so I better make available $26,500 to Lichtman, then he would wait until I got back to discuss me moving stock.

I had my sister go to my house and where I kept

$26,500, maybe a few dollars more, and I mean a very few dollars more than that, not thousands, I told her where it was and she went and got $26,500 and she brought it to Ivan Ezrine at Computravel where she was working, and Ezrine received a note from Joe Lichtman for $26,500, that I had loaned him $26,500. My wife gave Ezrine the $26,500 who gave it to Lichtman and Lichtman gave a note fo $26,500 to me. That was after I was in Europe.

While I was in Europe, that was done here.

Q Mr. Hellerman, at some point you had discussic did you not, with Mr. Morvillo concerning making restitutio to the victims of your crimes?

A No, sir.

Q Did you have discussions with anybody concerni making restitution?

A Yes, I did, sir.

Q Including your lawyer?

A My lawyer. That is who I had the discussion

Q Do you know if your lawyer had discussions wi the U. S.Attorney on that subject?

A I don't know who my lawyer had discussions with. My attorneys just came back and said I would be making a $100,000 restitution.

Q In the various cases you testified, your reca don't you, telling the jury in each of those cases, you were going to make restitution of $100,000?

A That is correct.

Q At the time of the Belmont trial, you had alread made restitution of $12,500?

A That is correct.

Q And you still had remaining the difference between $100,000 and $12,500 to make restitution?

A Yes.

Q And you told the jurors in cases when you got an honest job,you would make the rest of the restitution?

A Correct.

Q Do you know whether your lawyers told the U. S. Attorney that you would make that $100,000 restitution?

A I don't know what my attorneys told the U. S. Attorney. I know what my lawyers told me.

Q What did they tell you?

A That when I earn any money, that it is my obligation to make restitution of $100,000.

Q Did they tell you with whom they had agreed on this obligation of yours?

A No, they did not.

Q Do you remember, for example, that you testified at the Tramunti perjury trial?

A Yes, I did.

Q 73 Cr. 514.

You testified there that the restitution was $100,000 and you owe 87,000?

A I don't remember that testimony, but those are the facts, or were the facts.

Q YOu said you owed it. Did you think that was just a moral obligation or did you think it was an enfo able obligation?

THE COURT: Wasn't it a condition of his sente at that time?

MR. SILVERGLATE: I am trying to find it out.

THE COURT: I assume he heard sentenced pronounced in open court.

MR. SILVERGLATE: I am trying to find out wha his understanding was.

THE COURT: Let's move along here.

Q Do you remember stating in the Tramunti trial that the $100,000 restitution was negotiated between your attorneys and Mr. Morvillo?

A I don't remember saying that, sir. If it is matter of record, it's a matter of record, and I said it.

Q I show you page 189 to page 190 --

THE COURT: It is not necessary. Read it in offer it in evidence, one or the other.

You can ask him if he recalls being asked this question and giving this answer, reading the question and answer.

Q Do you recall the following sir:

"Q Mr. Naftalis has asked you whether as part of the agreement you understood you would have to pay restitution to people who were victimized by your crimes, is that right?

"A That is correct, sir.

"Q That figure of $100,000 is the figure you have to make restitution, that was arrived at, was it not, by a negotiation between your attorney and the United States Attorney?

"A Yes, sir."

Do you recall that?

A I don't recall it, but it's there and I said it.

Q And it's true?

A Yes.

Q It was true when you said it?

A Yes.

THE COURT: Which case was that, by the way?

MR. SILVERGLATE: United States vs. Tramunti, 73 Cr. 514, the perjury trial.

Q Mr. Hellerman, at the time you testified in the Belmont case, was it your understanding that you had a $100,000 obligation to make restitution?

A Yes, sir.

Q And you told that to the jury, right?

A If I was asked the question, I told it. I don't remember what I was asked.

Q Have you made that restitution yet, sir?

A No.

Q Have you made any part of it other than the $12,500?

A No, sir.

Q Has anybody from the U. S. Attorney's office asked you about making any more restitution?

THE COURT: You are asking him about now?

MR. SILVERGLATE: Since the time --

THE COURT: I don't see the relevance. I am really having this hearing to ascertain whether the book shows that the Government didn't comply with its 3500 obligations and its Brady obligations in Mr. Ostrer's trial, and what he did since that time isn't too important.

MR. SILVERGLATE: Let me get at it another way.

Q Did you have any discussions with either your lawyer or anybody in the U. S. Attorney's office concerning reducing that $100,000 obligation?

THE COURT: Prior toJanuary 1973.

Q Prior to the end of theBelmont trial.

A No, sir.

Q Was it your understanding when you testified in Belmont that you had a $100,000 obligation?

A I answered that, yes, sir.

Q Did you have any discussion with anybody at that time as to whether the obligation would be enforced by the Government or by the Court?

A I answered that too; no, sir.

Q At the time you testified in the Belmont case, did you intend to make that full restitution to the tune of $100,000?

A I still intend to.

THE COURT: You want --

THE WITNESS: I still intend to.

Q Have you set aside any of the proceeds of the advance for the book towards that end, sir?

A I told you I didn't get the proceeds.

THE COURT: Who are you going to make this restitution to?

THE WITNESS: Who physically?

THE COURT: Yes. You say now you intend to make a restitution of $100,000?

THE WITNESS: Yes.

THE COURT: To whom?

THE WITNESS: I would go to somebody in Mr. Broderick's office, I guess Mr. Patterson, or somebody, an ask them how it should be done and what should be done abo it, how it could be done. That is just the way I feel.

Q How long has your wife had the advance from the publisher?

A How long has my wife had the advance from the publisher?

Q Yes. When was the advance given?

A One part of the advance was given when the contract was signed.

Q What year, what month?

A I don't know the year or the month.

Q What year, sir?

A I would say -- I don't know the date.

Q Was it more than two years ago?

A Approximately.

Q Was any part of that money set aside for restitution?

A The money is still -- no.

Q Is any part of the second part of the advance set aside?

A No. ✓

Q Mr. Hellerman, are you telling us the truth when you say it is really your intention --

MR. WEINBERG: Objection. It really doesn't relate to the issues in this hearing.

THE COURT: I know that, Mr.Weinberg, but you see I am privy to something else. I know he didn't even pay the $12,500 and I took the view that was not a proper matter to be brought out in this hearing because it doesn't relate to his state of mind at the time of the Ostrer trial which ended in a verdict in 1973, January 26.

MR. WEINBERG: That is correct, your Honor.

THE COURT: What happened since January 26 is kind of irrelevant, but you know that.

THE WITNESS: I think your Honor is mistaken.

THE COURT: You didn't pay the $12,500 and you went to the Court and asked that that figure be reduced and it was and you knew that.

THE WITNESS: I think --

THE COURT: Those papers are under impoundment and I ordered they not be opened up because they don't have anything to do with Ostrer.

THE WITNESS: I was told when that happened that I still had an obligation to pay back not only the twelve, five, but the balance of the money.

THE COURT: Who told you that?

THE WITNESS: Mr. Broderick.

THE COURT: We will take a brief recess and everyone remain where they are until the witness leaves.

(Recess.)

(continued on next page.)

End 3

THE COURT: Chambers has received a telephone call from an attorney by the name Callagy and he advises that he is under subpoena, that he has to go to the Appellate Division tomorrow and would I please take him out of turn. He also advises the secretary that he has an attorney-client privilege in all events.

What is it you are offering to prove by Mr. Callagy? I am willing to take him out of turn. If you are trying to prove an undisputed fact, let's find out what it is.

MR. SILVERGLATE: Your Honor, Mr. Callagy is the attorney for Doubleday and for Renner -- well, he has at various times said he was attorney for Renner and for Mr. Hellerman as well as Doubleday. However, he more recently denied he was counsel for either one of them when it came to accepting service of process for them.

THE COURT: I don't know that an attorney is ordinarily empowered to accept service of process simply by being somebody's lawyer.

MR. SILVERGLATE: On the telephone Mr. Renner said we should serve Mr. Callagy. We called Callagy and he said he is not authorized to accept it for him.

We subpoenaed Callagy and ordered him to bring with him information concerning the contract on this book.

THE COURT: What is the relevance of it?

MR. SILVERGLATE: We would like to know when it was entered into.

THE COURT: Can't that be arranged?

Do you know when it was arranged, Mr. Weinberg?

MR. WEINBERG: I do not.

THE COURT: It seems like an awful waste of time.

MR. SILVERGLATE: Also the question of who verified, who among the government verified. There is correspondence between Mr. Callagy and Mr. Morvillo, some of which Mr. Morvillo attached to his affidavit and some of which he did not attach.

THE COURT: That wouldn't be privilege.

MR. SILVERGLATE: No, it would not. We subpoenaed that.

I also asked him to bring with him, if he has it, any tapes and so forth -- I am not sure whether Mr. Callagy has it or Mr. Renner has it. If Mr. Renner does not have the tapes, he will presumably come empty handed.

THE COURT: I will take Mr. Callagy out of turn so he could go to the Appellate Division. We will probably have to start 9:30 tomorrow.

Bring back Mr. Hellerman.

MICHAEL HELLERMAN, resumed.

CONTINUED DIRECT EXAMINATION

XXX BY MR. SILVERGLATE:

Q Mr. Hellerman, I am referring to you page 309 and 310 of the published edition. Page 309 the book says:

"When I returned to New York, I knew there was only one course left open to me. I would have to go to my attorney Broderick and tell him what I have been involved in."

Then we skip to page 310 at the top --

MR. WEINBERG: Your Honor, it seems to the government it is Mr. Hellerman's recollection that should control unless there is something inconsistent in the book.

MR. SILVERGLATE: He already said something inconsistent.

THE COURT: Don't argue. I will permit him to be confronted with portions of the book. However, I won't permit you to skip unless there is a good reason for skipping.

MR. SILVERGLATE: Shall I read it all into the record?

THE COURT: Yes.

MR. SILVERGLATE: "I can see by then that it would be only a matter of days, weeks at the latest before everything I was involved in blew sky high. I knew that Lichtman, Rothenberg and a half dozen others who had been involved in the swindles with me were appearing before the SEC for questioning and I knew that some of them would finger me as the master mind behind the Atlantic offshore, computer and minimum approved stock deals. Confirmation of my fears came quickly. On August 3, 1972, the day before my attorneys were to see Morvillo to approve a final agreement with the government that had taken six months to negotiate, the SEC suspended all trading in Computer Microdata stock. I wasted no time in going to Broderick's office to tell all."

Then the top of page 310:

"Mr. Broderick, I said, after sitting down in his office, I just robbed more than $250,000. You could hear a pin drop in the office as he stared in shock and amazement at me. You did what, he said? I just swindled more than $250,000, I repeated."

Then I think I can skip up until the bottom line of 310:

"As a result of that meeting, no deal was signed. It took three months for Broderick and Morvillo to come to terms on a new agreement and those three months turned out to be a living hell for my wife, myself and Johnny."

Then at the top of 311:

"I still had a quarter million dollars stashed, but the mob was pushing, squeezing, threatening me, demanding more and more money," then it goes on.

Do you want to look at the book?

THE COURT: What is the question?

Q Whether it's true at that point in time when the final agreement was being negotiated with Morvillo, after your return from Europe, you still had a quarter of a million dollars stashed.

A No, sir.

Q It's not true?

A No.

THE COURT: This book is full of mistakes, isn't it?

THE WITNESS: An awful lot, sir.

Q You wouldn't expect that statement to be in one of the tapes?

A If you listen to the tapes, you will see it's the truth. He took the context wrong out ofthe tape.

Q After you dictated the tapes, did you ever hear them?

A No, I did not, sir.

Q Mr. Hellerman, did you ever have any discussions with Mr. Morvillo concerning immunity from prosecution for your mother?

A Could you clear up the question? The word "immunity" --

Q Did you ever have any discussions with Morvillo concerning whether or not the United States Attorney's office would prosecute your mother, yes or no?

A I am trying to think?

Q With Morvillo or any member of the United States Attorney's office?

A Yes.

Q When were those discussions and with whom?

A I don't remember with whom they were and I don't remember if I was present when they were discussed with my attorneys, but the understanding was, that anybody in my family, not my mother, anybody in my family that had done anything in one of my swindles, or because of me, would not be prosecuted for it.

Q Is that embodied in any written agreement that you know of?

A No, it's not.

Q Was it embodied in any memos or correspondence between your attorneys and the United States Attorney?

A I don't know.

Q This agreement, as you understood it concerned prosecution of members of your family or non-prosecution of members of your family; that was entered into, was it not, prior to your testimony in the Belmont trial?

A Yes, sir.

Q Did you consider that to be an important part of your agreement with the government?

A For the sake of harassment, yes.

Q You insisted upon it, didn't you?

A I don't understand what you mean I insisted upon it.

Q You insisted that as part of your agreement with the government, the government agreed not to go after other members of your family.

A I asked my attorneys to try to negotiate that.

Q And your attorneys told you that that had been negotiated?

A Yes.

Q Did they tell you with whom it had been negotiated?

A I don't remember.

Q Do you know with whom it was negotiated?

A No. I know it was the United States Attorney's office.

Q Members of your family, can you tell us who that includes?

A It included anybody that was related to me through my mother, my brother-in-law, my sister, that were involved in anything that I did. In other words, anything that I did.

Q That would be your mother --

THE COURT: It isn't necessary to enumerate it. It's his whole family.

Q Did it include Ira Schultz?

THE COURT: What difference does it make? It's his whole family. I don't think it makes any differenc

Q Mr. Hellerman, during the period 1969 to 1972, you earned substantial amounts of money, didn't you?

A Yes.

Q A lot of that money you earned in swindles, didn't you?

A Yes.

Q You reported a lot of that money on your tax returns?

A All of it.

Q In fact over a four year period, you reported over $1 million?

A I think so, more than that.

Q Did you ever pay any taxes on any of that?

A No, sir.

Q Did you have any understanding with the government concerning whether or not, first of all you would be prosecuted criminally for the failure to pay tax?

A No, sir.

THE COURT: Do I understand you filed a return but just didn't send a check with it?

THE WITNESS: That is correct.

Q Were the returns filed by the way each year or did you --

A Each year.

Q Did you have any understanding with the United States Attorney's office concerning whether the government would try to collect the taxes civilly?

A They did try to collect them civilly.

Q Have they attached the proceeds of your book?

THE COURT: You are so interested in the proceeds of that book. He already testified the proceeds of the book went into a corporation controlled by his wife.

He can answer the question.

Did anybody attach or levy --

THE WITNESS: No, not that I know.

Q What effort did the government make to collect taxes from you?

THE COURT: Unsuccessful efforts, right?

Q Were they unsuccessful?

A Yes.

THE COURT: Let's go on to something else.

Q During the years you filed tax returns, were they tax returns for you and your wife?

A No, they were my own.

Q Do you know who Jean Handwieler is?

A My mother's maiden name.

Q Mr. Hellerman, at the time the Belmont stock collapsed, were you pretty much broke after that?

A Yes.

Q Is that around June of 1970 that you were broke?

A I don't remember.

Q Around June of 1970, you got involved in the At Your Service Leasing fraud, didn't you?

A If that is the date. I don't remember dates. It's a long time ago.

Q If I told you you so testified in the Gugliaro perjury case.

A I wouldn't dispute that.

Q After the collapse of Belmont, you felt you had to earn money?

A I had to.

Q Was money very important to you in those days?

A Sure, I had to pay Mr. Ostrer back and Mr. DiLorenzo and everybody else so I wouldn't get killed.

Q You were also a high liver?

A Yes.

Q Did Mr. Ostrer ever threaten to kill you?

A Mr. Ostrer personally?

Q Yes.

A No.

Q How much did you pay back to Mr. Ostrer?

A I paid back to Mr. DiLorenzo.

Q Did you ever give Mr. Ostrer a penny?

A Yup.

Q About $1700 you testified to?

A Yes.

Q How much?

A I don't remembernow how many shares of stock that I took him out of before it collapsed. May have been 30,000 or 60,000.

Q In fact, at the Belmont trial you testified you had no idea whether Ostrer made or lost money in Belmont.

A I still don't know.

Q After you had your verbal deal with Morvillo, you participated in the Computer Microdata swindle, is that right?

THE COURT: Didn't we already have that earlier today?

I can't have this repetition, really. I

think we had all those swindles earlier.

Q Mr. Hellerman, at the time you testified in the Belmont trial, you had already been sentenced by Judge Lasker, is that correct?

A Yes.

Q And you intended at that point to wait eight or nine months to wait before asking your attorneys to ask to reduce the two year sentence?

A Excuse me?

Q You intended at that time, did you not, to wait eight or nine months and then ask your attorneys to ask Judge Lasker to reduce the two year sentence?

A Yes, sir.

Q You did ultimately ask your lawyer to move for reduction?

A Yes.

Q And it was granted, was it not?

A Yes.

Q Did you talk to Mr. Morvillo about your intention? I am not asking you about what he said he would do, just about --

A No, sir.

Q Let me finish the question.

Did you mention to Mr. Morvillo at any time that you were planning at some time to ask your attorneys to move for reduction?

THE COURT: I think this inquiry ought to be fixed by January 26, 1973. Any discussions he had with Mr. Morvillo prior to that date.

MR. SILVERGLATE: He just denied any discussions.

THE COURT: It's not clear to me he denied it, but I think you have an open question.

Q Mr. Hellerman, prior to January 26, 1973, did you have any discussions with Mr. Morvillo concerning your intentions with respect to a motion to reduce sentence?

A Not that I remember, sir.

Q Is it possible you had such discussion?

MR. WEINBERG: Objection.

THE COURT: Anything is possible. Objection sustained.

Q Do you have a firm and clear memory of not having discussed it with him?

A I don't remember discussing it with him.

Q Did you discuss that with anyone else in the United States Attorney's office?

THE COURT: Prior to January 26, 1973?

Q All of these questions are prior to January 26, 1973.

A I don't think so, sir.

Q Did you have your lawyers discuss it with anybody?

A I don't think so, sir.

Q Did you inform your lawyers prior to January 26th -- you already said yes.

Did you have any idea prior to January 26, 1973 what the government's position might be if you made such a motion?

A It wasn't discussed so I don't think I had any idea.

Q You didn't ask your lawyers -- when you told your lawyers it was your intention to wait eight or nine months then to make such a motion, did you have any idea in your own mind as to what position the government might take?

THE COURT: His undisclosed intent wouldn't be relevant, would it?

MR. SILVERGLATE: I will get to the disclosed intent next.

THE COURT: I will let him answer.

A The question you are asking, I can't answer that yes or no. I will be glad to explain.

Q Would you please explain?

A My attorneys just filed a motion for reduction in the normal course to protect my interest. I think there was a time limit of 120 days or 90 days, whatever it was and just as proper attorneys, they filed the motion.

It's my best recollection it was not until the summer, June, that I had a discussion with them about a hearing on the motion to reduce my sentence, to my best recollection, and then I was informed at that point that the government's position would be to oppose it; that my attorneys informed me and I don't have the exact date or the exact time sequence, but the first conversation I had with them about it that the government would oppose it, but it was way after the 26th that we had the discussion

Q Were you told they would oppose it or take no position on it?

A The first discussion, I believe my attorneys told me that they thought the government would oppose it. When in fact it was heard, I believe I was told that they would take no position or did not take a position on it.

Q Did you hear a colloquy at the Belmont trial, at page 696 of the Belmont transcript at which Assistant United States Attorney Harold McQuire stated:

"I can make a representation and this is what is concerning me. The government has not made any representation express or implied that it will or even that it might make any communication of any kind whatsoever to the parole board. Indeed, it's my understanding that this witness' attorney's do not expect a replyfor an early parole, nor do they expect to make an application for reduction of sentence."

Did you hear that stated?

A No, I did not.

THE COURT: The indication in the transcript is that that was a discussion in the robing room. I guess he really meant to say to apply, but I don't believe that is any part of the proceedings in open court or in the witness' presence.

MR. SILVERGLATE: There are a lot of times --

THE COURT: Don't argue it. I will let the answer stand.

Q At the time of the Belmont trial, you had told your attorneys you would have them wait eight or nine months then have them make the motion?

A No, sir, they made the motion before. They made the motion within 120 days or 90 days, whatever the time limit was.

Q You are saying they made the motion before you testified in Belmont?

A No.

Q Let me ask the question again --

THE COURT: That is on the docket when they made the motion.

MR. SILVERGLATE: Yes.

Q Mr. Hellerman, at the time you testified in the Belmont case, did you at that time have in your mind you would plan to wait eight or nine months then ask your attorneys to ask Judge Lasker to reduce the two year sentence?

A Yes.

Q Did you communicate that intention during or prior to the Belmont trial to your attorneys?

THE COURT: Mr. Morvillo, you can hang up your coat, then you can be excused.

May the record show Mr. Morvillo has left the courtroom.

A I don't remember.

Q Mr. Hellerman, in the tapes that you dictated for this book, did you at any time refer to Mr. Ostrer as a pigeon?

A I don't remember.

Q Did you on those tapes acknowledge that he lost $105,000 in the Belmont deal?

A I don't remember.

MR. SILVERGLATE: I have no further questions at this time.

THE COURT: What do you mean by that?

MR. SILVERGLATE: Mr. Morvillo is going to be the next witness. I may want to bring Mr. Hellerman back after Mr. Morvillo testifies.

THE COURT: You know, I don't want to make an inconvenience for the marshal here.

We will have to do the best we can.

Mr. Weinberg, you may cross examine.

CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Hellerman, did there come a time you had a conversation with Mr. Morvillo about $80,000 in Natco funds?

A Yes.

Q Do you recall Mr. Morvillo telling you that the government had researched the question and had determined that the government had no lawful right to keep that $80,000 of Natco funds?

MR. SILVERGLATE: Objection. Leading.

THE COURT: It's cross examination.

MR. SILVERGLATE: This is not an unfriendly witness to the government.

THE COURT: Anybody that wrote this book couldn't be regarded as a friendly witness to the government.

I don't know what he needs proxy for. This will be a widely sold book in the federal penitentiary, I can assure you of that.

Reframe the question, Mr. Weinberg and try not to ask leading questions.

Q Mr. Hellerman, do you recall where this conversation with Mr. Morvillo took place?

A I believe in his office.

Q Do you recall if anyone else was present?

A I believe Mr. Schustek and I don't know if Mr. Winters or Mr. Kerland were there.

Q Will you tell us the substance of the conversation, trying to identify what participant said what during this conversation?

A Mr. Morvillo said that if there was a request made, if Mr. Kerland made a request for the funds, they would be returned back to Mr. Schustek. However, if the money was used for any reason except to pay the debts of the company, he would make sure that everybody involved was prosecuted.

Q Do you recall anything else said by Mr. Morvillo during this conversation?

A No, sir.

Q Do you recall Mr. Morvillo stating that the government had determined that the government had no lawful right to maintain custody of those funds?

A Not really, sir.

Q Were you named as a defendant in the Natco case?

A I think a co-conspirator. I don't remember.

Q Mr. Hellerman, concerning the trip that you made to Europe while you were under indictment in this court, when you arrived at the airport, could you just describe for the Court what happened to you?

A I waited in the lounge with Joannie and my brother-in-law. We were taken on a bus and we were taken to the airline. As we were walking on the airplane, three, approximately three detectives and Joe Lichtman were standing there and he was pointing me out and the detectives came over and said I could not get on the plane. The other two people could get on the plane but I could not get on the plane. That Mr. Lichtman had accused me of stealing money from him and although he hadn't signed a complaint yet, I had to go with them.

Q Did you go with the detectives at that time?

A Yes.

Q What happened to you then?

A They searched me. They told me that I had no right to leave the country because Lichtman told them I was under indictment and had no right to leave the country and at one point Lichtman said I did this because you didn't run my stock up and one of the detectives turned around to Lichtman and said they weren't a collection agency.

The detectives made some phone calls. I told them to get a hold of Broderick or Edwards or Judge Lasker or the FBI or whoever and determine that I had permission to leave.

They waited about two and a half hours then they told me I did have permission to leave. I don't know who they checked with or finally made contact with but they did tell me I had permission to leave the country.

Q And it was too late for you to catch a plane to Europe that evening?

A Yes.

Q The next day, did you leave for Europe?

A Yes.

Q What time?

A I think it was TWA 9:30 flight or 8:30 flight. Between 8:00 and 9:00.

Q You never told Mr. Roth you had left the country with $250,000?

A It's an absolute lie.

Q Did you ever tell Mr. Roth you had left the country with any substantial sums of money?

A Mr. Roth knew I was always short of money --

MR. SILVERGLATE: Objection.

THE COURT: It's not responsive. I will strike it out.

Q Mr. Hellerman, concerning Mr. Winters, would you please, to the best of your recollection relate the conversation that you initially had with Mr. Morvillo concerning Mr. Winters' willingness to talk to the governmet?

Do you recall if anybody else was present at this conversation?

A Mr. Winters, Mr. Morvillo and myself and I believe somebody else from the office but I don't know who.

We met at the Regency in New York and I

explained to Mr. Morvillo that I had to have somebody to fall back on; that I was doing this undercover work and I had nobody that knew and any time needed help, I had no one to fall back on and I wanted to tell Murray Winters and I wanted Murray Winters to know that Mr. Morvillo knew that he knew and that was the sum and substance of the meeting and Mr. Winters was going to represent me and file the necessary motions that were necessary so the wise guys wouldn't know I was cooperating as far as defending the case at that point.

Q Did you have a subsequent conversation with Mr. Morvillo in which you informed Mr. Morvillo that Mr. Winters wanted or was willing to talk to Mr. Morvillo about any knowledge he might have of any criminal wrongdoing?

A I told Mr. Morvillo that.

Q Was it the same meeting?

A To the best of my recollection, yes, it was at the same meeting. There was no discussion that day in front of me.

Q Was there any discussion by Mr. Morvillo that Mr. Winters could speak to him and he would be given immunity in return for his testimony?

A No, sir.

Q Did you ever have any discussion with Mr. Morvillo prior to the time that Mr. Winters was indicted about Mr. Winter being immunized?

A No, I did not, sir.

THE COURT: Do I understand that you wanted to tell Winters that you were cooperating in a clandestine fashion?

THE WITNESS: Yes, sir.

Q At that time, Mr. Hellerman, you needed an attorney to enter an appearance on your behalf?

A Yes, sir.

Q And you had spoken to Mr. Morvillo about Mr. Winters being that attorney?

A Yes.

Q Mr. Hellerman, let me direct your attention to the first time that you spoke to Mr. Nizer about the possibility of his law firm representing you.

Would you please tellus who was present?

A Mr. Roth, Mr. Nizer , Mr. Erm, Mr. Broderick and myself.

Q Do you recall when this meeting took place?

A I don't know the time.

Q Please tell us what each participant in the meeting said.

A Mr. Roth said to Mr. Nizer that he had brought me here because of his son and Mr. Nizer looked at -- had a copy of the imperial indictment in front of him and I told him I was going to be indicted in many other cases and Mr. Nizer started to say maybe through his good offices I wouldn't be and Mr. Erm butted in and said can't you see that he is the target, that forget about that and Mr. Nizer said, we can defend this case but there are three stipulations to us taking the case and he said No. 1, that there is no violence or killing and I explained to Mr. Nizer that that wasn't my bag and I wasn't dealing with somebody else.

No. 2, he said that I had to be able to afford the time to devote to the case, that he would assign many lawyers to the case and there was a lot of research to be done and I had to be able to afford the time and, three, I had to be able to afford the retainer which was $100,000.

Q At this conversation, you did not tell Mr. Nizer that you planned to cooperate with the government?

A No, I did not, sir.

Q After this conversation with Mr. Nizer and the other people you mentioned, did you have a conversation with Mr. Morvillo about Mr. Nizer's law firm representing you?

A Yes, I did.

Q During that conversation, the subject of the fee Mr. Nizer was going to charge came up?

A Yes.

Q What did you say to Mr. Morvillo about the fee and what did Mr. Morvillo say to you?

A I asked Mr. Morvillo if he would call Broderick, or had gotten Broderick yet and he said he would call.

I said to him just explain to him the deal so he knows there is no work involved, because I can't afford those kind of fees yet I needed that firm because Roth had recommended the firm.

Mr. Morvillo said he would and a short time afterwards I got a call from Mr. Broderick asking me to come to his office and I did.

Q Did you then have another conversation with Mr. Nizer about your fee?

A Yes.

Q What did Mr. Nizer tell you at that time?

A That I still needed representation even though I made an agreement with the government and because there wasn't much work, he would cut the retainer from

$100,000 to $50,000.

Q Did Mr. Morvillo ever tell you he had spoken to Mr. Broderick about the legal fee Mr. Broderick was going to charge you?

A Not to my knowledge.

THE COURT: When you say Mr. Broderick, the Nizer firm?

MR. WEINBERG: Yes.

Q Mr. Hellerman, did Mr. Broderick ever tell you that Mr. Morvillo had spoken to him about the legal fee to be charged in connection with representing you?

A No,sir. Mr. Broderick said if I had come to him first without going to Mr. Nizer, he would have done it for a very reasonable fee, but there is no way he could convince Mr. Nizer I didn't come to the office for Mr. Nizer rather than himself.

Q Mr. Hellerman, you mentioned that you had made a number of tape recordings of conversations relating your various experiences as a swindler; is that correct?

A Yes.

Q Did you do that in response to specific questions by someone or was it more of a, you were just relating your experiences into a tape recorder?

A Most of it was, Mr. Renner would start a conversation, tell me about Belmont or tell me about something else and I would just talk.

Q And you did not listen to those tapes since the time they were made?

A That is correct.

Q And at the time that the book The Wall Street Swindler was published, had you read over the entire book in order to check it for accuracy?

A I did not, sir.

THE COURT: He still hasn't read it as I understand.

THE WITNESS: I read half of it.

Your Honor, I would like to make a point to you so you would know.

When I come into New York like today, then I leave, I can't take that book back where I am in hiding and I know it sounds silly and stupid why I don't read the book but I can't be seen with the physical book on my presence so I can't take it back.

THE COURT: Did you ever hear of putting a brown paper bag cover on a dirty book?

What college did you go to?

THE WITNESS: Franklin Marshall.

THE COURT: They didn't do that down in Pennsylvania.

Q Mr. Hellerman, do you recall when you testified in the Belmont case?

A I don't recall the date. I remember testifying in it.

THE COURT: Those dates I would take. They are all on the docket. I will take judicial notice of any of those dates either at your request or Mr. Ostrer's counsel.

MR. WEINBERG: I am just trying to see if I can get his recollection.

Q Mr. Hellerman, do you recall when you signed your agreement with the United States government in connection with your cooperation?

A I think it was October 19, 1972.

Q How long after that, if you recall, did you testify in United States v. DioGuardi and Ostrer?

A Then it would be January 4th or 8th, 1973.

Q When did you speak to Mr. Renner about the writing of a book now called The Wall Street Swindler?

A Way after that. At least a year later.

Q So the time you testified in the Ostrer trial, you did not have any discussions with Mr. Renner about writing the book, The Wall Street Swindler; is that right?

A Yes, sir.

MR. WEINBERG: No other questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

XX

BY MR. SILVERGLATE:

Q Prior to your testifying here today, did you discuss your testimony, did you go over your testimony with Mr. Weinberg?

A I saw Mr. Weinberg and Mr. Weinberg asked me some questions. Yes. You said testimony. I wouldn't say I discussed my testimony.

Q Did you discuss the case with Mr. Weinberg?

A Yes.

Q You never discussed it with me or any other lawyer for Ostrer, did you?

A No.

MR. SILVERGLATE: No further questions.

MR. WEINBERG: Nothing else, your Honor.

THE COURT: Would it be possible to have him available tomorrow in case he has to be recalled? I am reluctant to hold him over unnecessarily if it's an undue burden of the protection service?

You can step down for the balance of the day, Mr. Hellerman.

(Witness excused)

MR. WEINBERG: I will make arrangements with Mr. Partington to have Mr. Hellerman available tomorrow.

THE COURT: Hopefully it won't be necessary but I think they are entitled to have him excused until the proof is closed.

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MR. DERSHOWITZ: I would like to call Mr. Morvillo.

ROBERT G. MORVILLO, called as a witness, testified as follows:

Q Mr. Morvillo, you received a phone call sometime in the last few days from Mr. Weinberg asking you to appear in court with certain documents, is that not right?

A Yes.

Q Could you tell me whether you have brought those documents and if so, where they are .

A The only documents that I brought were letters to and from the United States Attorney's office dated December 8, 1975 and December 5, 1975.

Q Were you told to bring any other documents by Mr. Weinberg?

A I was asked by Mr. Weinberg to bring any documents I had with regard to Michael Hellerman.

THE COURT: Would you please mark for identification at this time the documents produced by the witness.

Hand them to the Clerk.

THE WITNESS: Those two documents which I gave you are the only two documents I have which were not attached to the affidavit which was submitted in this proceeding.

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[Defendants Exhibits A and B marked for identification.]

Q Mr. Morvillo, do you recall a meeting that you had with Mr. Hellerman at the Regency Hotel at which a Mr. Winters was present?

A I recall the fact that a meeting did take place. I can't tell you it was at the Regency Hotel.

Q Do you recall approximately when you first met Mr. Winters?

A No, sir.

Q Do you recall approximately when you first learned that Mr. Winters was involved in criminal activity?

A No, sir.

Q Can you give us an approximate frame of reference? Was it about the time that Mr. Hellerman began to disclose to you Mr. Hellerman's own crimes?

A I don't recall.

Q Do you recall at some time learning that Mr. Morris Winters, an attorney, was involved in criminal activities?

A Yes, sir.

Q Would there be any file in the office of the United States Attorney's office that might refresh your recollection as to when you first learned that Mr. Morris

Winters may have been involved in criminal activities?

A I doubt it.

Q Do you recall your first debriefings of Mr. Hellerman?

A Do I recall my first debriefings of Mr. Hellerman?

Q Yes.

A Not with precision. I recall a meeting with Mr. Hellerman on several occasions.

Q Do you recall approximately when that occurred, when you first met with Mr. Hellerman and he discussed with you crimes he may have been involved in?

A Well, it is really two questions, Mr. Dershowitz.

THE COURT: Separate the questions.

A I believe the first few times that I met Mr. Hellerman, the discussion was about whenever he was going to cooperate, not about what crimes he may have committed.

Q When did you first learn from Mr. Hellerman of his own crimes, approximately? A year?

A If you give me the year of the Imperial indictment, the very first indictment, it would be a month one way or the other of that indictment.

Q The Imperial indictment was November 19, 1970. A month one way or the other?

A That is right.

Q Was it before or after the Imperial indictment?

A I began to deal with Mr. Hellerman, and that is, when I was dealing with him, I began the process of negotiating with him as to whether or not he would cooperate with the government, shortly before the Imperial indictment was filed.

In terms of when we actually got into the substance, any substantive information he had, I don't recall how extensively he was debriefed prior to the time of the Imperial indictment.

I do recall specifically that he did give me some information which eventually was utilized by me in the Imperial case.

Q Do you recall that at some point Mr. Hellerman told you about criminal actions on the part of Mr. Morris Winters?

A No, sir.

Q Are you testifying now that you have no recollection or are you testifying that no such --

A I am saying I have no specific recollection of discussing Mr. Winters' criminal activities with Mr. Hellerman.

Q Did there come a time when you learned through any source that Mr. Winters was involved in possible criminal activities?

A Yes.

Q When?

A I don't recall.

Q Approximately what year? Relate it to an event.

A It has to be in relationship to my participation in the presentation of the Belmont case to the grany jury, I think.

Q When was that?

A You will have to take the filing of the date of the Belmont indictment and go back three or four months. It is a period of time I think I had worked on that case.

Q Do you recall at your meeting in whatever hotel with Mr. Winters and Mr. Hellerman,any discussion at that point of any possible criminal activity on the part of Mr. Winters?

A No, there was no discussion about any criminal activity on the part of Mr. Winters to my recollection but there was my assertion to both Mr. Hellerman and to Mr. Winters that if Mr. Winters had in fact participated in any criminal activity, I was making no commitment to Mr. Winters at the time of that meeting.

Q What led you to conclude at that time that Mr.

Winters may have been involved in criminal activity in orde to give that kind of an admonition?

A I don't know. It is possible I had information prior to the time of that meeting with Mr. Winters or it is possible because of the way that meeting came about, I was suspicious about what was happening.

Q Were you aware at that time or shortly thereafte of any reputation that Mr. Winter may have had as being a corrupt lawyer?

A At some time thereafter.

Q In your dealing with Mr. Winter as Mr. Hellerman attorney, did you deal with him as if he were a trusted distinguished honorable member of the Bar?

A I don't recall dealing with Mr. Winters as Mr. Hellerman's attorney in many instances.

Q Is it not the fact at that meeting at the hotel whatever it was, Mr. Winters came along as Mr. Hellerman's attorney?

A Absolutely not.

Q In what role did he come along?

A I don't know what role he came along in. I was supposed to meet Mr. Hellerman on that occasion. I can't tell you the name of the hotel or the date of the meeting. I was with two FBI agents.

Q CAn you give me their names?

A To the best of my recollection, it would have been Agent Stapleton and Agent Jules and the only reason is that, those were the two case agents assigned to Mr. Hellerman.

Q Do you know if they took notes at this meeting?

A No, I don't know.

Q Was it their general practice in your experience to take notes at meetings that you were attending with potential witnesses?

A With potential witnesses, I don't believe I ever met with any potential witnesses other than with Mr. Hellerman. At that time Mr. Hellerman was in the category of an informant and not a potential witness, so I can't answer that on a general basis, Mr. Dershowitz.

Q When Mr. Hellerman arrived at the meeting, you were surprised to see him accompanied by Mr. Winters?

A He was not accompanied by Mr. Winters when he arrived at the meeting.

Q When did Mr. Winters arrive at the meeting?

A Mr. Hellerman brought Mr. Winters up to the meeting sometime during the course of the meeting. I don't know whether it was within the first fifteen minutes or first hour, I just don't recall.

Q What did he say to you when he brought this stranger, Mr. Winters into the meeting, how did he introduce him?

A He said Mr. Winters was anxious to talk to me, that he believed that Mr. Winters had some information which would be useful to me in some of the investigations that we were conducting at that time and that he wanted to bring Mr. Winters up to introduce him to me.

I told Mr. Hellerman that I would be happy to talk to Mr. Winters but that he should understand since I didn't know what Mr. Winters had done or had not done at that point, that I was making no commitment to Mr. Hellerman and would not make any commitment to Mr. Winters at that point as to what was going to happen to him as a result of his talking to me.

Q At that point you were not treating Mr. Winters as an honorable attorney in a lawyer-client relationship with Mr. Hellerman, you were treating him as a possible potential source of information about criminal activity; that correct?

A My recollection is that is the way he was introduced to me, at that point.

Q And you left that meeting with the understanding that Mr. Winters may be a potential source of information about criminal activity that he himself, Mr. Winters, may have been involved in?

A That is correct.

MR. DERSHOWITZ: Your Honor, we have gotten a note that Mr. Hellerman's sister is here and says she must be put on the witness stand today,she can't testify tomorrow, she has to close down her business.

Reluctant as I am to interrupt the testimony of Mr. Morvillo --

THE COURT: I can't sit overtime tonight. I have about 15 more minutes and that is it.

MR. DERSHOWITZ: I think that is all we would need.

THE COURT: What is she going to testify to? You know this witness has to earn a living.

MR. DERSHOWITZ: This witness we will have to continue for several hours.

THE COURT: What is it that the sister is going to testify to? Give me an offer of proof. Perhaps I ought to have Mr. Morvillo step out.

MR. DERSHOWITZ: Generally she will testify about -- is she in the courtroom?

About allegations that she received a phone call, that she went to his house --

10 rksr

THE COURT: All right, but I will not sit beyond ten minutes of five.

Step down, please, Mr. Morvillo. Will you come back at 9:30.

MR. WEINBERG: From what Mr. Dershowitz said, it sounds like she is going to testify about the incident with Joseph Lichtman. I don't understand that is part of the issues in the hearing as you laid them out, your Honor.

MR. DERSHOWITZ: It doesn't deal with that.

THE COURT: It is the allegation he was taking money to Switzerland, which he rebuts by saying his sister sent him $500. If she testifies she sent him $500, I will take that testimony or if she said she didn't send it, I will take that, too.

MR. WEINBERG: Will Mr. Morvillo be available tomorrow?

THE WITNESS: I will be, your Honor.

THE COURT: Thank you. Please stand down for the balance of the date.

[Witness temporarily excused.]

THE COURT: Bring the lady in.

Absolutely no nonsense, gentlemen, I have to get it done. Go right to the point.

SUSAN GOLDFARB, called as a witness, being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. SILVERGLATE:

Q Are you the sister of Michael Hellerman?

A Yes.

Q Are you his own sister?

A Yes.

Q Have you spoken with him in the last couple of days?

A I spoke to him last night.

Q Did you speak to him about your testimony here?

A I spoke to him -- I told him I had spoken to you and I was wondering what it was all about.

Q Did you discuss with him the question of the money you might have wired him in Europe?

A I told him what I told you, what I told you on the phone.

Q Repeat what you told me.

A I called you and asked you if you really wanted me to come down here, that if it was in reference to money, I would probably blow your whole case.

THE COURT: How far did you go in school?

THE WITNESS: College.

THE COURT: Have you studied law?

THE WITNESS: No.

Q How do you know that you would blow my whole case away if it was about money?

A I understood it was in reference to foreign bank accounts.

Q Who told you that?

A The subpoena.

Q And that is the only place you learned of the importance of foreign bank accounts?

A The only time my brother was ever in Europe was the time he took a trip that I sent my mother and his wife on to Europe and he followed afterwards and at that time, if that is where the foreign bank account was, I believe that was the only time he was ever in Europe.

Q At the time of that trip, do you know if he had a substantial sum of money, by which I mean in excess of $10,000?

A No, I don't.

Q Stashed away?

A Stashed away?

Q Yes.

A At the time that he left?

Q Yes.

A No.

Q Do you know if he paid or had anybody paid $26,000 or thereabouts to Mr. Joseph Lichtman?

A When he was in Europe, he called me and told me to go to his house and there was a wig box in one of the closets and to take out 26,500 or 400, something like that, and that Mr. Ezrine and Mr. Lichtman would come by to my office and pick it yup and that Mr. Ezrine would give me a release or piece of paper, whatever it was saying that he had taken it.

Q You just said you didn't know whether he had any money stashed in this country at the time he left for Europe.

A No. He called me from Europe.

Q But you now know he had money in this country at that time?

A All that was there was that plus a few extra hundred dollars in the box.

Q Do you know about any other money that he had secreted at the time?

A No.

Q How much was left in the box after you took out the 26,000?

A I think a few hundred dollars.

Q Were you aware of the burlary that had recently taken place at Michael Hellerman's house?

A Recently?

Q Just shortly prior to the time that you took the money out of that wig box.

A Yes.

Q Do you know how much was taken during that burglary?

A Jewelry.

Q Do you know if any cash was taken?

A I don't know.

Q Did Michael Hellerman ever tell you what the loss was during that burglary?

A Moneywise?

Q Valuewise.

A No.

Q Did Michael Hellerman ever have any bank accou or stock brokerage accounts in your name that you know of

A Not that I know of.

Q Do you know if he had any in your husband's name?

THE COURT: It is really not relevant to the book, is it, whether he had stock accounts in her name or her husband's name. Let's come to the point.

Q Did he ever leave you any keys to any safety deposit box?

A No, he did not.

Q You wired him $500 while he was in Europe, is that correct?

A Correct.

Q In Switzerland ?

A In Switzerland.

Q To an American Express office?

A I don't recall where it was. I went to the Hempstead Bank in Hempstead and I asked them to make a transaction for me and I wired him the $500. I don't remember if it was to an American Express Bank or what.

Q · And you wired the $500 on the instructions or the request of Michael Hellerman?

A He called me collect to wire it.

Q He called you collect from Europe?

A Yes.

Q Before he left you had no idea that he might be needing money from you?

A None whatsoever.

MR. SILVERGLATE: No further questions.

MR. WEINBERG: No questions, your Honor.

THE COURT: All right. Thank you, Mrs.

16 rksr

Goldfarb, you are excused.

[Witness excused.]

THE COURT: Author meets the critics will resume tomorrow morning.

MR. DERSHOWITZ: Your Honor, we are having a difficulty at the moment locating Mr. Renner and his, what are apparently all important tapes and we are also having an impossible time locating an obviously critical witness. Namely, Mr. Schustek who Mr. Weinberg elicited from Mr. Hellerman attended a critical meeting and was crucial to an extra right of aspects to this.

We are led to believe that Mr. Schustek is under protective custody. The government is aware of his whereabouts. We can't serve him. We would like the government to produce him, because we regard him at this point as an absolutely crucial witness.

THE COURT: I couldn't tell how crucial he is until Mr. Morvillo finishes testifying but I think it is in everyone's best interest to conclude the hearings as expeditiously as possible and make as full a record as reasonably possible; so I think I ought to put the question to you, Mr. Weinberg, what is the status of Mr. Schustek?

MR. WEINBERG: I don't know whether he is in protective custody or not.

MR. DERSHOWITZ: We can represent to you on the basis of a transcript of a proceeding as recently as the Spring, March of 1977, that he was in the protective custody of the very marshal in this United States Courthouse.

THE COURT: Why don't you call that proceeding to Mr. Weinberg's attention, give him the docket number and title of it.

MR. SILVERGLATE: It may be that he is no longer in custody but that the Wintess Protection Program people are the only ones that know who he is and where he is.

THE COURT: That might be.

Call that to the attention of the United States Attorney. I will take it up with you after he has had a chance to look into it.

Anything else at this time?

MR. SILVERGLATE: We want to tell the Court we are making an attempt to subpoena Mr. Renner and the tapes. We will inform the Court --

THE COURT: Who owns the tapes?

MR. DERSHOWITZ: We haven't been able to determine that because we have not been able to have

18 rksr

conversations.

THE COURT: All right. I will be in recess until tomorrow at 9:30.

[Adjourned to Wednesday, May 11, 1975 at 9:30 a.m.]

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LOUIS OSTRER

vs. 72 Civ. 1805

UNITED STATES OF AMERICA

May 11, 1977
9:30 a.m.

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(Hearing resumed.)

THE COURT: Mr. Morvillo, you can resume the stand.

MR. DERSHOWITZ: Your Honor, there are two preliminary matters.

One, a report by Mr. Silverglate about his contacts with Mr. Renner and a report by Mr. Weinberg about Mr. Schustek and I think they should be done early.

THE COURT: Very quickly.

MR. WEINBERG: Your Honor, I contacted Mr. Partington yesterday and was notified that Mr. Schustek is a relocated witness. Mr. Partington will make efforts to obtain Mr. Schustek if the Court desires. It is highly improbable that Mr. Schustek can be here today. If the Court is going to sit tomorrow, I will notify Mr. Partington.

THE COURT: Later on this morning, I will take up the matter of his necessity, what he will offer to prove and whether what he will testify to can be stipulated and if it developes he is essential, I will take him tomorrow.

What about the other problem?

MR. SILVERGLATE: With respect to Mr. Renner, we have been trying to serve Mr. Renner and have been unsuccessful. We finally got a telephone call from him late last night. He said indeed that he does have the taperecordings that Mr. Hellerman referred to and they are at a place where they are not accessible on a notice the night before or even the same day. He wouldn't give me any hint where they were. He told me it will take him more than a single day to get them. He would have to then review them.

He wanted me to give him some idea of portions o the book that we are interested in because there are an awfu lot of tapes.

THE COURT: That is very easy to do. Take yester day's transcript and any time thatyou found the witness Hellerman walking away from the authenticity of his own book and stating that Mr. Renner had garbled the tapes, those are the elements of the tapes we are interested and I will say to you those are the only tapes which I will play.

I will not play the entire tapes, and it may wel be, if you would review the matter, that you don't care. You may feel that your record is better without the tapes, but that is a matter for your own judgment as an advocate.

MR. SILVERGLATE: Mr. Renner did tell me that he assures me that everything in the book is justified by the tapes and that he did not deviate from the tapes.

THE COURT: There wouldn't be much use in having tapes if you are going to deviate from them.

MR. SILVERGLATE: Correct.

THE COURT: Get your transcript, review it and take it up with Mr. Renner, tell him what you want.

MR. SILVERGLATE: There is a problem of timing, your Honor. What am I to tell Mr. Renner when these might be produced. Assuming I can get a preview line to them.

THE COURT: It is not clear to me that you really want any of them. Form your own conclusions, then I will take them as soon as possible. I can't require Mr. Renner to accomplish the impossible any more than I can require Mr. Schustek to accomplish the impossible. Let Mr. Renner know what you want, find out when he can comply and I will take it.

MR. SILVERGLATE: Do that today.

THE COURT: I will not sit next week in this matter.

You will have to go over beyond next week if you

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can't get it organized.

MR. SILVERGLATE: I will contact his lawyer today.

THE COURT: If you want to be excused from the hearing for purposes of making that kind of a call, I will let you do it.

The Court has been informed that Mr. Callagy has a date in the Appellate Division and as soon as he gets here, he wants to answer those two questions and leave.

MR. DERSHOWITZ: We are prepared to put him on.

xxx ROBERT G. MORVILLO, resumed.

xxx CONTINUED DIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q Mr. Morvillo, can you inform the Court as to the approximate dates of your direct contact with Mr. Hellerman while you were debriefing him or having discussions with him?

A No.

Q Can you tell us the year you began to meet with him and the year you stopped meeting with him?

A I can tell you the year I started to meet with him in connection as I told you yesterday, I don't recall the year but it was the year the Imperial indictment was filed.

Q And the year you stopped meeting with him approximately?

A It probably would have been the year I resigned from the United States Attorney's Office, but at that point I wasn't really meeting with him because I was not assigned to any of the cases, I was Chief of the Criminal Division.

Q What cases were you assigned to that Mr. Hellerman testified in or gave you information about?

THE COURT: Is that going to take all afternoon?

THE WITNESS: There were only three.

A The first case, the Imperial case, since I presented that case to the Grand Jury.

Q Did he testify in the Grand Jury?

A I believe that he was subpoenaed to testify before the Grand Jury. I don't know whether he actually testified or whether he invoked his Fifth Amendment privilege or he was excused from testifying. I don't recall without checking the record.

The second matter that I handled that Mr. Hellerman was involved in, gave me information about was the case United States v. Carson and the third one was the Belmont Franchising case which I also presented to the Grand Jury.

Q Approximately how many occasions do you think you met with Mr. Hellerman, just a rough approximation, during this period of time?

A I have no recollection.

Q Did you spend dozens of hours, hundreds of hours

A Certainly not hundreds of hours.

Q Dozens of hours?

A It is hard for me to say, Mr. Dershowitz. I don recall how many times I met with him. He was at that time, when I was dealing with him, I was dealing with him in his role as an informant. He was primarily assigned to the FBI and not to me.

Q But there came a time when you decided he should be used as a witness in Court, is that correct?

A That was after I was the Chief of the Criminal Division and he was thereafter assigned to the various assistants, Assistant United States Attorneys in charge of those particular cases at that time.

Q You did say you presented the Belmont case to the Grand Jury?

A I did.

Q And it was your contemplation at that time that Mr. Hellerman would be a witness in that case?

A No.

Q Was he a witness in front of the jury in that case?

A I don't recall.

Q Did there come a time in your entire action with

Mr. Hellerman that you decided he should become a Government witness as distinguished from an informer?

A I didn't make that decision. The decision was made by myself, by Mr. Hellerman and by Mr. Hellerman's attorneys.

Q You participated in that decision?

A I participated in negotiations leading up to that decision.

Q Is it fair to say you urged Mr. Hellerman to become a witness?

A I think that is fair to say.

Q Did there come a time when you reached a conclusion after your interaction with Mr. Hellerman about his honestly and credibility?

A With regard to what specific issue?

Q In general, as an honest and credible person whose testimony you would feel comfortable in presenting to the Court.

A Yes, there came a time when I reached that conclusion.

Q Was your conclusion that he was an honest and credible person for whose testimony you as the United States Attorney in charge of the criminal division or in charge of a particular case, could vouch?

A I never could vouch for anybody's credibility, Mr. Dershowitz. What I had made a decision about in terms of whether or not to utilize Michael Hellerman as a witness was whether there was sufficient corroboration for the testimony he would give. In the context of all the facts and circumstances of any particular case.

Q Did you ever make a judgment that Mr. Hellerman himself was generally a credible and trustworthy person whose information you would credit?

MR. WEINBERG: Your Honor, while I don't mind --

THE COURT: Are you objecting?

MR. WEINBERG: Objection.

THE COURT: Sustained.

Q Mr. Morvillo --

THE COURT: You see, the problem with that question is this: from the very inception of his relationship with Hellerman, this witness knew that Hellerman was a crook and you are asking him to give an opinion and to give such an opinion, he would have to crank into it the fact that he knew he was what is euphemistically called a cooperating individual, in essence, a crook, someone who would tell of the wrongdoings of his associate.

Q Mr. Morvillo, taking into account Mr. Hellerman's background and the fact that Government lawyers often have to deal with people with shady pasts, was it your impression that Mr. Hellerman was generally a credible person?

MR. WEINBERG: Objection.

THE COURT: The question is so vague. Isn't there sufficient evidence here in the record for the Court to find that the prosecutors regarded Hellerman as a crook who had valuable information?

You don't dispute that, do you?

MR. DERSHOWITZ: No.

THE COURT: That is who they call for witnesses, crooks that have valuable information.

Q I take it, Mr. Morvillo, you assumed or concluded the valuable information this man had was, in general, truthful information.

A Some of the information that was corroborated, I considered to be truthful. Mr. Dershowitz, I never made the decision in any case whether or not Mr. Hellerman should be called as a witness. I was never in charge of any case in which he testified.

Q But you urged Mr. Hellerman to become a witness. It was you, you stated and Mr. Hellerman's lawyer and Mr. Hellerman who ultimately reached a decision to change his status from that of secret informant to public witness.

A That is correct.

Q At that [illegible]nt, I take it, you made some determination about his usefulness as a witness under oath.

A I made some determination about his potential usefulness in a general sense, but the decision as to whether or not to call Mr. Hellerman in any particular case was always left to the assistant United States attorney who tried the case. I only tried one case in which Mr. Hellerman would have been a potential witness and that was the case of United States v. Carson and he did not testify in that case.

(Continued on next page.)

Q Did Any Assistant United States Attorney in charge of any of the cases that Mr. Hellerman was a witness in consult with you before deciding to call Mr. Hellerman as a government witness?

A Not to my recollection.

Q Those decisions were made even while you were chief of the criminal division without any consultation with you?

A I do not recall any Assistant United States Attorney coming to consult with me as to whether or not they should call Mr. Hellerman as a witness.

Q Were you aware that the United States Attorneys in charge of those cases were planning to call Mr. Hellerman as a witness?

A Of course I was.

Q Are you aware to this day of any occasion Mr. Hellerman lied under oath in any of these trials or at any point?

A No.

THE COURT: You are not counting yesterday.

THE WITNESS: I wasn't here yesterday.

Q I am talking specifically about his testimony at trials or grand jury proceeding. Nobody ever pointed out to me any situation, to my recollection, any situation that Mr. Hellerman lied at any of the trials.

Q Have you ever examined Mr. Hellerman under oath?

A I don't know whether he was ever before the grand jury in the Belmont case or in the Imperial case.

Q Did you examine Mr. Hellerman at length in your office or in various hotels about the details of crime?

A If you take it at length out of there, the answer is, yes.

Q Did you form an impression after speaking to Mr. Hellerman about the details of crime as to the credibility of the various stories he was telling?

A Yes.

Q Did you believe he was a credible witness?

A I believed that the information that he gave me was worth checking out and in the overwhelming number of instances that I personally was able to check it out, it checked out to be credible.

Q Are you aware of any situations in which a case was made, essentially, on the basis of Mr. Hellerman's credibility without substantial portions of his testimony being corroborated by external evidence?

MR. WEINBERG: Objection.

THE COURT: It is a vague question. The use of the word "substantial" and talking about a case being made. It is not clear what the question really calls for and I don't see the relevance of it.

MR. DERSHOWITZ: I will withdraw that question.

Q Did there come a time when you were asked to review portions of Mr. Hellerman's and Mr. Renner's manuscript?

A Yes.

Q Did you review those portions?

A I read portions of the book.

Q Approximately how many pages did you read?

A I don't recall, but you have the letter that I sent to Mr. Renner which will tell you.

Q The letter indicates you read approximately 105 pages of the manuscript. Does that refresh your recollection?

A No, it doesn't refresh my recollection.

THE COURT: What was the purpose of reading it?

THE WITNESS: Mr. Callagy sent me the book and asked me to read it and comment on it.

THE COURT: To see if you were defamed?

THE WITNESS: I assume he was looking to protect himself from libel suits.

THE COURT: By you?

THE WITNESS: He didn't say. He wrote me a letter, a copy of which is attached to the affidavit which I submitted to the Court and enclosed the transcript and asked me to read it. It took me about two or three months. I read part of it and never got to read all of it frankly because of the press of business.

THE COURT: Is this a common practice for people to send you manuscripts of that sort to read?

THE WITNESS: I believe it is the first one I have ever gotten.

Q Is it a fact he asked you to read it because "You were mentioned prominently"?

A Whatever the letter says.

Q The problem is, we don't have all the letters.

Is it not the case, to refresh your recollection and would you look at the letter of August 9, 1976?

A Yes.

Q The letter of August 9, 1976 --

MR. DERSHOWITZ: Would you mark it.

Q -- states, does it not, begins by thanking you for the letter of August 9th?

A The letter of August 6th thanks --

Q The letter of August 9th thanks you for the letter of August 6th?

A If that is what it says.

[Defendant's Exhibit C, marked for identification.]

THE COURT: Didn't you think, Mr. Morvillo, that the book portrayed you in an unfavorable light?

THE WITNESS: In portions, your Honor, yes.

THE COURT: You weren't concerned?

THE WITNESS: No, your Honor, there are a lot of books that have been written about things that happened in the U. S. ATtorney's office that portrayed me in unfavorable light. In the Clifford Irving case.

THE COURT: You didn't believe this gave you an opportunity to tell the attorney for the publisher it was unfair in its portrayal of your activities?

THE WITNESS: I didn't think there was any possibility of the book, changed and I didn't want to get into that kind of discussion, nor did I care very much about it one way or the other, your Honor.

Q Picking up on the judge's question. Did not the letter of Mr. Callagy, which, by the way, I would like you to look at and ask you to read the first two words of the letter, the first two words under the address.

A "Dear Bobby".

Q And it starts by saying that he met you at a party --

THE COURT: You don't have to read it.

A It says "Saw you at a distance." It doesn't say he met me at a party. Do you have difficulty reading?

Q It indicates in the second paragraph that he spoke to you previously.

A It indicates that.

Q In the last paragraph it invites you, specifically invites you to comment on whether the statements made by the author of these papers are fair and reasonable.

A That is what it invites me to do.

Q Getting back to the letter of August 9, the letter of August 9 to you thanking you for a letter of August 6th?

A That is right.

Q Your affidavit does not, however, include a letter of August 6th?

A I don't think so.

Q Why not?

A Because I couldn't find it.

Q In the letter of August 9th, it indicates that you mentioned various other Assistant United States Attorneys in that letter.

A Of August 6th?

Q In the August 9th letter it is indicated in your August 6th letter, you mentioned other United States Attorneys.

A Other assistants.

Q Can you tell us the circumstances under which after writing a letter on August 3rd indicating that the matter was closed, you wrote a letter on August 6th reopening the matter?

A I didn't reopen the matter. I believe what happened is, when Mr. Callagay got my first letter which said that I thought there were some inaccuracies in the book, he got concerned, and I think he either called me or wrote to me about that concern and wanted to know what those inaccuracies were and wanted a more complete statement in writing from me as to my reactions to the book and I told him without sitting down with the transcripts, with the files, with the memos to the files and talking to other Assistant United States Attorneys about the incidents depicted in the book, that I would really have no way of giving him the kind of comprehensive review that he wanted.

I said to him, indeed, many of the incidents depicted in the book I have no personal knowledge of one way or the other because I was not in charge of the cases, and I suggested to him the names of other Assistant United States Attorneys who were in charge of those cases. I specifically recall telling him about Mr. Wing, Mr. Maguire and probably about Mr. Schreiber.

Q In response to the August 9th letter referring to your August 6th letter, did you have any further contact with him?

A I don't think so, I think that closed it out.

Q And you have made a complete search of your files for the August 6th letter?

A I asked my secretary to make a complete search of the files. I didn't personally do it.

Q Do you have any idea what could have happened to that letter?

A It must have been misplaced into a different file.

Q In your letter of August 3rd, you described, did you not, the inaccuracies of "a minor nature."

Is that a correct characterization of the way you felt about those inaccuracies as you read 105 pages of the document?

MR. WEINBERG: Your Honor, might I suggest that direct questions be placed to Mr. Morvillo about his recollection of events. If his testimony is then inconsistent, Mr. Dershowitz would have a right to try to impeach him.

THE COURT: That might expedite the hearing.

However, the last question is permissible.

A Mr. Dershowitz, the inaccuracies that I recollected, I thought were of a minor nature. In view of what I thought Mr. Callagy's purpose to be. But I think I said in that letter that I really could not comment on the accuracy of many of the events depicted in the book without sitting down with my files -- not my files, but the files of the United States Attorney's office, teh transcripts, the memos to the file and talking to the various and sundry Assistant United States Attorneys who had handled many of the Hellerman matters.

Q Is it fair to say that as to those portions of the manuscript which directly referred to you, that if there had been any glaring major inaccuracies, that you would have pointed them out to the author?

MR. WEINBERG: Objection.

THE COURT: Wouldn't you like to hear him answer that?

MR. WEINBERG: We can be here all day.

THE COURT: I am afraid we are anyway.

Objection overruled.

A I just can't answer that question at this point, Mr. Dershowitz. I think the answer is probably yes, but it really depends upon what my thought processes were at the time and what I was trying to accomplish.

Q Were you trying at this point to be truthful with the publisher, that is, did you have any intent to prevent him from learning about any major inaccuracies regarding you?

A No.

Q So, any failure to communicate about an inaccuracy would simple by, as the result of a conclusion that the inaccuracy was not one that came to your mind at that moment as a substantial one?

A It was not one that bothered me at that moment. I think the choice of your word "substantial" you would have to put it in the context of the issue you are talking about. Callagy was troubled, I think, about the possibility of libel suits and perhaps one from me.I had no intention of suing anybody for lible as a result of that book, so when I wrote back to him, I tried to alleviate his concern. On the other hand, I tried to point out to him that I thought there were portions of the book which were inaccurate.

Q Mr. Morvillo, when did Mr. Hellerman first tell

1541

you about the Natco Merchandise Plus scandal?

A I have no recollection.

Q Do you recall being told about it at some point in some detail?

A Not in very much detail, because I wasn't specifically in charge of that matter.

[Continued on next page.]

Q Do you recall a meeting between yourself and Mr. Hellerman in which he described to you a lot of crimes, a whole series of crimes, and at which you took meticulous or detailed notes?

THE COURT: The form of that question even so far is highly impermissible.

Q Do you recall a meeting at which Mr. Hellerman described to you in detail a series of crimes that he had been involved in?

A No, I have no specific recollection of any such meeting.

Q Do you recall a meeting at which Mr. Edwards, Tom Edwards, the man who succeeded you as I understand it as head of the Criminal Division, presently serving as personal counsel for Mr. Hellerman?

A I attended a lot of meetings with Mr. Edwards and Mr. Broderick.

Q I am trying to recall a specific meeting at which an issue came up as to whether or not Mr. Hellerman had told you about a specific crime, whether or not a specific crime had been related to you.

A I don't recall that particular meeting.

Q Let me try to refresh your recollection.

Do you recall an incident where Mr. Hellerman said "I told you about it," and you, Mr. Morvillo said "No, you did not," then Mr. Hellerman said "You took notes about it", and you responded by saying "Any notes I took would be in this drawer and there are not any notes about that crime in that drawer," whereupon you went to the drawer, pulled out some notes, looked at the notes and said, in effect, "You know, you are right, you did tell me about that crime, I had forgotten about it."

Does that refresh your recollection?

A No, it doesn't.

Q Is it your testimony here that to the best of your recollection, no such event occurred?

A I didn't say that. I said I have no recollection of it.

Q Do you recall ever taking notes of any meeting with Mr. Hellerman at which Mr. Hellerman related to you the details of crimes that he had committed?

A No, I don't recall taking notes. For the most part, any notes that were taken were generally taken by the FBI, who attended these meetings. Again, when I met with Mr. Hellerman, it was in his capacity as an informant, not in his capacity as a potential witness, and I believed it was their responsibility, because he was their informant, really, to take notes. That is not to say, however, at some occasion there wasn't something which I thought was significant that I didn't jot down or make a note of, but I don't have specific recollection of making detailed or copious notes at that time.

Q I would like to read you from one of the answers that Mr. Hellerman gave yesterday and ask you whether that answer given by Mr. Hellerman under oath refreshes your recollection as to any such meeting.

MR. WEINBERG: Objection.

THE COURT: Sustained.

Q If you had taken any notes on Mr. Hellerman, would they have been placed in any central retrievable location?

A I doubt it. I think if I took any notes with regard to Mr. Hellerman, I would have disseminated those notes to the Assistant in charge of the particular case, because I was aware of 3500 requirements.

Q The Assistant in charge of a particular case?

A That is right.

Q That is, if you had taken notes of Mr. Hellerman's discussion of say three specific crimes, you would only disseminate those notes to the Assistants in charge of those three particular cases?

A Sure.

Q You would not disseminate those notes to Assistants in charge of a fourth case?

A No, because it was the policy of the office that the Assistants as they tried cases were supposed to go and look through the 3500 material in the other files that were available to them.

Q Is it not also the policy of the office they are supposed to look through the files of the particular case they are involved in?

A Of course.

Q Why did you have to disseminate those notes to him without disseminating the other notes about other crimes which would be less obvious and harder to find and equally available under Rule 3500?

MR. WEINBERG: Objection.

THE COURT: It is a sort of an argumentative question, isn't it?

MR. DERSHOWITZ: This is in effect cross-examination.

THE COURT: You have to ask simple enough questions on cross-examination so as to require an answer.

MR. DERSHOWITZ: I can break it down.

THE COURT: You can't give somebody a speech and ask him to answer it like that and make anything out of the answer.

Q You stated that you would distribute to an Assistant United States Attorney --

THE COURT: I heard what he stated. Frame your next question.

Q Is it not a fact that an Assistant United States Attorney in charge of a case would have an easier time locating, without your help, material about the case that he was trying than about other crimes not involved in that case which Mr. Hellerman might have admitted to you?

MR. WEINBERG: Objection.

THE COURT: Sustained, on the ground the question is argumentative and the answer would be irrelevant. It isn't how easy or how hard he makes his subordinate work that counts. The question here is in this particular Belmont Franchising case, as to your client, the government complied with its obligations under the statute and under the Brady rule. That is all I am trying. Maybe they could run their office better. There isn't an office in the world that couldn't be run better.

MR. DERSHOWITZ: I accept that and I will focus in on this.

Q Did there come a time when you disclosed to the

Assistant United States Attorneys in charge of the Belmont Franchising case the material that Mr. Hellerman had given you involving that particular case?

A I don't recall, because I am not sure that I ever reduced that to paper.

Q Did there come a time when you yourself turned over to the Assistants in charge of the Belmont case, any notes you had taken about other crimes that Mr. Hellerman had admitted to you in the process of your meetings with him?

A Again, Mr. Dershowitz, I don't know whether I took any notes about any of the other crimes. So, without knowing or without recalling whether I took any notes about any of the other crimes, I certainly can't tell you whether or not I turned over those notes to anybody.

It was my routine practice in the office that if I took notes, which I thought constituted 3500 material, I would send them to the Assistant in charge of the case.

Q Mr. Morvillo, may I ask you to look at a memorandum from you to the Honorable Morris Lasker --

THE COURT: Would you mark it for identification, please.

** [Defendant's Exhibit D marked for

identification.]

MR. DERSHOWITZ: It is dated November 21, 1972.

A Do you want me to read the whole thing?

Q Use it to refresh your recollection as to whether you sent such a memorandum to Judge Lasker.

A I have no recollection whether I sent this to Judge Lasker.

Q Can you read it enough to tell us whether you have any recollection as to whether you sent that to Judge Lasker?

A No. I will read it but I am sure I will not have any recollection as to whether I sent it to Judge Lasker, since in November of 1972, I was chief of the Criminal Division and I doubt very much that I prepared this.

THE COURT: You are suggesting that an Assistant prepared it and gave it to you for signature?

THE WITNESS: Surely. It says JRWDRF. JRW is obviously Mr. Wing. DRF is obviously Mr. Wing's secretary, so I doubt very much I prepared this memo.

[Continued on next page.]

Q To your memory, did either of the two gentlemen whose initials appear on the top of this speak with you, consult with you or seek to obtain any of your notes or materials in preparation of the memorandum which was under your name?

A I don't recall that they did and I doubt very much that they did because Mr. Wing at that point was in charge of the Hellerman matters and knew much more about the Hellerman matters than I did.

Q Were you aware of the prosecution against a man named Aloi?

A I think he was a defendant in the Imperial case, Vincent Aloi?

Q Vincent Aloi.

A Vincent Aloi.

THE COURT: The Court observed that Mr. Callagy has come into the courtroom and I think we had a message in chambers that he had a date in the Appellate Division of the New York State Court and I understand you only have two matters you want to ask him, so maybe we can take him out of turn.

Is that true, you are going up to the Appellate Division?

MR. CALLAGY: Yes, your Honor, this afternoon.

THE COURT: Would you step down, Mr. Morvillo.

(Witness Morvillo temporarily excused.)

THE COURT: Is it possible if you gentlemen spoke to counsel, you can stipulate what he knows?

MR. SILVERGLATE: I can do that.

THE COURT: Why don't both you and Mr. Weinberg speak with him and maybe you can make a stipulation on the record.

I understood you wanted the date of the agreement?

MR. SILVERGLATE: Correct.

THE COURT: What else?

MR. SILVERGLATE: The missing letter.

THE COURT: Talk with him. I will take about a five-minute recess.

(Recess.)

xxx ROBERT M. CALLAGY, called as a witness having been first duly sworn by the Clerk of the Court, testified as follows:

xxx DIRECT EXAMINATION

BY MR. SILVERGLATE:

Q Mr. Callagy, you are an attorney?

A I am.

Q You represent Doubleday?

A I do.

Q Do you also represent Thomas Renner?

A I do not.

Q And you don't represent Michael Hellerman?

A I do not.

Q You had some correspondence, did you not, with Robert Morvillo?

A Yes.

THE COURT: Make it for identification.

MR. SILVERGLATE: Marking an August 6 letter from Mr. Morvillo to Mr. Callagy.

xxx (Defendant's Exhibit E marked for identification.)

MR. WEINBERG: I believe this is attached to Mr. Morvillo's affidavit.

THE COURT: As I understood it, there is a letter Mr. Morvillo couldn't find. Why don't you go directly to that.

MR. SILVERGLATE: Your Honor, what has happened is --

MR. WEINBERG: Your Honor, what happened was, in collating the materials for Mr. Morvillo's affidavit, I must have, and I assure the Court, inadvertently didn't attach the August 6 letter that I served on Mr. Ostrer's counsel.

THE COURT: I have an August 9 letter from Mr.

Mr. Callagy to Mr. Morvillo, an August 6 letter from Mr. Morvillo to Mr. Callagy and an August 3 letter from Mr. Morvillo to Mr. Callagy and a May 18 letter from Mr. Callagy to Mr. Morvillo. That is what I have on the original.

Put them in possession whatever the Court has.

MR. DERSHOWITZ: The August 6 letter which was the subject of that dialogue appears in everybody's correspondence except ours.

THE COURT: You should have called it to Mr. Weinberg's attention earlier.

MR. DERSHOWITZ: We didn't know.

MR. SILVERGLATE: Mr. Morvillo responded he didn have his file copy.

MR. DERSHOWITZ: That he had conducted a search.

MR. WEINBERG: At the time I heard the testimony I assumed they were talking about a fifth letter.

THE COURT: Please let's go on.

Q Mr. Callagy --

MR. WEINBERG: Just so the record is clear, I am now giving a copy of the August 6 letter to Mr. Dershowitz.

MR. DERSHOWITZ: In case any recess intervenes in any way, I would like to have it understood I would like Mr. Weinberg not to alert Mr. Morvillo to this incident. I would like to examine him on it. I am entitled to it.

THE COURT: I decline to make any such direction but Mr. Morvillo may be asked after the recess whether he discussed the matter with anybody during the recess.

Q Mr. Callagy, are you aware of the existence of any taperecordings made by Mr. Renner with respect to the "Wall Street Swindler" -- not made by Mr. Renner, any taperecordings of discussions -- any taperecordings made by Michael Hellerman or at least containing Michael Hellerman's voice with respect to the contents of "Wall Street Swindler"?

A Mr. Silverglate, as to this question, I will have to assert the attorney-client privilege and decline to answer.

Q You don't represent Mr. Renner, do you?

A I do not represent Mr. Renner, but I do represent Doubleday and Company, Inc., the publisher of the book, the subject of your question.

THE COURT: I must say this is a waste of time. You had Hellerman on the stand and he testified he made tapes and he testified he delivered the tapes to Mr. Renner. Whether Doubleday in the course of an attorney-client communication told this witness, counsellor, we want you to know we are in possession of Renner's tapes or counsellor, we want you to know that Renner has the tapes that Hellerman made; is totally cumulative and unnecessary. If he had a communication with his client where no non-client was present other than his clerk of his employees, he is not only entitled, he is required to assert the attorney-client privilege because it belongs to Doubleday, not to this witness; but it is cumulative and a waste of time.

It has been established they are tapes. I might say parenthetically, the Court is assuming at least some of the heros and villans portrayed in this book are going to sue for defamation and when they do, it is very likely that this witness may be retained or his law firm may be retained to defend those civil actions.

So there is a bonafide attorney-client situation present in this picture.

MR. SILVERGLATE: I was interested in whether or not there are copies of the tapes in the witness' possession. I know certainly tapes exist, I don't need Mr. Callagy for that.

Q Mr. Callagy, do you have these tapes?

A I have to assert the attorney-client privilege.

THE COURT: Are you telling us in good faith to answer that question, you would have to tell us the substance of the communication made to you by your client under a privilege?

THE WITNESS: Yes, your Honor.

Q Mr. Callagy, have you ever spoken to Mr. Renner about these tapes?

A I don't recall whether I ever spoke to Mr. Renner directly about these tapes.

Q Mr. Caliagy, in your letter of May 18 to Mr. Morvillo, you referred to pages 395 to 592 of a manuscript of the book. Do you have that?

A May I see the letter, please.

THE COURT: How is this relevant?

MR. SILVERGLATE: The manuscript indicates which pages Mr. Morvillo reviewed and commented on.

THE COURT: I understand that but how is this witness' testimony about that relevant? The letters speak for themselves. You have had Mr. Morvillo on the stand and it doesn't really bear on the issues I am trying here. That is what I don't understand.

MR. SILVERGLATE: This is highly relevant.

THE COURT: Tell me how?

MR. SILVERGLATE: Mr. Morvillo reviewed these pages and said there were minor inaccuracies.

THE COURT: That the Court already knows. What will you get from this witness?

MR. SILVERGLATE: Precisely what Morvillo reviewed and found to be substantially accurate.

THE COURT: How does he know?

MR. SILVERGLATE: We cannot corelate the pages of the manuscript to the pages of the book unless we have that manuscript.

THE COURT: All right.

Q Do you have that manuscript?

A I do not.

Q Did Mr. Morvillo return it to you with the letter or with any letter?

A I believe he did.

THE COURT: Are you able to tell us what portions of the book you sent to Mr. Morvillo, either by chapter or topic matter or portion in any way so you could tell us what part of the book Mr. Morvillo had before him for consideration?

A I sent Mr. Morvillo manuscript pages 395 to 592 of the manuscript that existed on or around May 18, 1976.

THE COURT: Would it be fair to say you sent Mr. Morvillo all of the book in which Mr. Morvillo was directly or indirectly mentioned?

THE WITNESS: I believe that I did, yes.

MR. SILVERGLATE: No further questions.

THE COURT: No cross?

MR. WEINBERG: No questions, your Honor.

THE COURT: All right.

(Witness excused.)

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ROBERT G. MORVILLO, resumed.

DIRECT EXAMINATION (CONTINUED)

BY MR. DERSHOWITZ:

Q Mr. Morvillo, I had asked you to look at your letter of August 3 and the reply of August 9 and I asked yo why the letter of August 6 was not present and you indicate you had had your secretary make a search for it and was no able to find it.

I would like to show you a letter dated August 6. Is that the letter that your secretary was unable to find?

A It must be. Do you want me to read it?

Q No.

Can you tell me precisely what instructions you gave your secretary and how diligently you asked her to search for the letter?

A I asked her to go through my personal file and pull the correspondence with regard to the Hellerman book.

Q When you noticed that the August 9 letter was responsive to an August 6 letter, you asked her to go back and see if she could find the August 6 letter.

A I am not sure whether I did or not.

Q Did you know there was a letter missing?

A I think so. I think I discussed it with Mr.

Weinberg somewhere along the line but I am not positive.

Q At that point you were instructed to go back and have a second look?

A As I instructed? I don't think so.

Q Did you tell your secretary --

A I don't recall whether I did or not. It's possible I did.

Q This was only five months ago or six months ago.

A What was only five or six months ago?

Q August 3 -- I am sorry.

When did Mr. Weinberg ask you to search your files for this?

A Within the last two weeks, three weeks.

Q And you don't recall whether or not you asked your secretary to go back again and check for the August 6 letter?

A Right. I don't recall whether I specifically asked her to go back and check for the August 6 letter.

Q You are certain you asked her to check for a letter that was reflected as being missing by the correspondence of August 3 and August 9.

A I said I am not sure whether I did or not.

Q So it may be that you just never asked your secretary --

MR. WEINBERG: Objection.

THE COURT: He said he doesn't know.

Precisely what did you ask your secretary to do?

THE WITNESS: I asked my secretary originally to pull out for me the correspondence that I had with Mr. Callagy about the Hellerman book.

THE COURT: And to give it to somebody?

THE WITNESS: To give it to me. Make copies of it and give it to me because Mr. Weinberg wanted me to attach it to my affidavit and that is what I recall doing.

I don't recall whether or not at that point I focused upon the fact there was a missing letter and I don't recall whether or not I asked her to go back and search for the missing letter. I think I did, but I am not sure.

Q Can you describe to me your discussions with Mr. Weinberg about the missing letter?

A No, not really. I think we discussed the fact there was a missing letter.

Q Did at that time you go back and look for it again?

A I don't recall. I certainly didn't make any search for it.

Q And you don't recall whether you instructed your secretary to do it?

A That is right.

Q And you ultimately, to the best of your recollection, never did find a missing letter?

A If we found a missing letter, Mr. Dershowitz, you would have had it.

Q That is true.

Let's get back to the Natco matter.

We were talking about the Aloi case, the Imperia case.

Do you recall that at the Imperial case, Mr. Hellerman testified as to the circumstances under which he first told you about the Natco scandal?

A Which Imperial case are you talking about?

Q The Aloi case.

A There are two of them, aren't there?

THE COURT: Two trials of the same defendant?

THE WITNESS: There was a mistrial and some of defendants were retried, your Honor. I didn't try either o them, I didn't participate in either case and I never read the transcript.

THE COURT: I ruled yesterday that any transcri in any case in which Mr. Hellerman testified, the Court wou judiciously know if copies of his testimony in that case we made available to the adverse party and to the Court.

Whatever he testified to in these other cases and the dates of his testimony are a matter of record in this Court and the Court can always take notice of its own proceedings, so you don't have to prove whatever he testified to in either of the Aloi trials.

Q You testified you do not recall when Mr. Hellerman first told you about the Natco matter?

A That is right.

Q Does it refresh your recollection to know that at the Aloi case, Mr. Hellerman testified under oath that he told you about the Natco matter at the same time he made his general understanding with you?

A No, it does not refresh my recollection.

Q Is it consistent with your current recollections of your interaction with Mr. Hellerman that he might have told you --

MR. WEINBERG: Objection.

THE COURT: I suppose that is permissible.

Q -- about the Natco scandal at about the same ti he generally told you about the past crimes in which he was involved?

THE COURT: Do you understand the time referenc of that question?

THE WITNESS: No. I don't know when he told me about all the general crimes he had been involved. I don't think I ever had a discussion with Mr. Hellerman in which he listed every crime in which he had been involved. That wasn't the purpose of my dealing with Mr. Hellerman.

Q Was there a conversation in which you and Mr. Edwards and Mr. Hellerman talked about what crimes were covered under the so-called blanket of non-prosecution, in th event that Mr. Hellerman testified fully and candidly?

A Yes. That was shortly prior to the written agreement that the U. S. Attorney's office entered into with Mr. Hellerman.

Q Was there some discussion then, as to which crim were covered?

THE COURT: It is written in the agreement.

MR. DERSHOWITZ: It is not written in the agreement.

THE COURT: You may bring that out. Call his attention to any crimes not written in the agreement. Is that agreement in evidence in this hearing?

MR. WEINBERG: I do not believe it is.

THE COURT: It is attached to somebody's affidavit, isn't it?

MR. WEINBERG: I believe it is attached to Mr.

Silverglate's affidavit.

THE COURT: Can we have the copy of the agreement marked in evidence at this time or handed up or both.

You may proceed.

Q Do you remember the name of the FBI agent who took notes at the meetings that you, the FBI agents, had with Mr. Hellerman?

A No. I could tell you the two FBI agents that were generally assigned to Mr. Hellerman. I cannot tell you which one of them took notes.

Q Can you tell me their names?

A For the most part, there was Special Agent Frank Jules and Special Agent Paul Stapleton.

THE COURT: We got this last night.

MR. DERSHOWITZ: I did not have the transcript last night.

THE COURT: Even so, we were all here and we are supposed to remember what the testimony is and I will ask you not to repeat. Most of the people who try cases in this Court don't enjoy the luxury of daily copy.

Q Mr. Morvillo, did there come a time to your current recollection when Mr. Hellerman described to you a deal whereby he and a man named Jerry Schustek had taken over two companies on Long Island for purposes of buying merchandise on credit, selling the merchandise off at a reduced rate, taking the money that was due to creditors and keeping the money for themselves?

A I don't recall specifically that he gave me all of those details because Mr. Dershowitz, I was not assigned to that case. Mr. Cognill was assigned to that case.

Q Who assigned Mr. Coghill to that case?

A Either myself or Mr. Harold Baer, Chief of the Criminal Division at that time.

Q Is it possible you referred Mr. Coghill to that case, is it not?

MR. WEINBERG: Objection.

THE COURT: Anything is possible. Objection sustained.

Q In order to assign a case to an assistant, you have to be told something, do you not, about the details of the scheme.

THE COURT: I would like to hear his answer to that.

A To assign a case to an assistant United States attorney, requires either a written report or an allegation.

Q Do you remember in the Natco case, the case I am describing as the two Long Island companies, whether there was a written report or a mere allegation?

A No.

Q But you do recall right now as you sit here that at some time Mr. Hellerman told you something about two Long Island Companies which were being looted?

A Somebody, and I think it was Mr. Hellerman, gave me information which led to the opening of the investigation in the Natco case.

Q Do you know when the investigation in the Natco case was opened?

A No.

Q Could you find that out by looking at the files currently in the United States Attorney's Office?

THE COURT: That date ought to be requested of Mr. Weinberg, whom I am sure will stipulate it for you.

As I understand it, this witness has been out of the office for some time and engaged in private practice and I am not disposed to tell him he has to go back in and look things up for anybody.

MR. WEINBERG: I will look it up and stipulate.

THE COURT: It is a matter of record in the office?

THE WITNESS: It might not.

MR. WEINBERG: It might be the date assigned to an assistant.

THE WITNESS: It may not be. It may have been assigned informally to an assistant. Sometimes it's done formally with index cards. Sometimes when it's only an allegation, it's assigned informally like go check this out and see.

THE COURT: What keeps you from having two assistants working on the same case?

THE WITNESS: If it's informal allegations, it's pure memory.

THE COURT: You have 100 assistants?

THE WITNESS: About 70 in the Criminal Division and I don't ever recall a situation where two assistants were assigned to the same case.

THE COURT: Is there any way you can tell when the investigation was begun?

THE WITNESS: You have to look at the file and it will give you some indication when the investigation begun but it may not give you the precise date the case was opened.

Q Do you recall when he told you about these Long Island companies, did he tell you about one company or two companies?

A I don't recall, Mr. Dershowitz, what he told me.

Q You don't recall anything?

A No.

Q Can you tell us exactly now as you sit here, what you recall he told you about those Long Island or that Long Island company?

A He told me there was an organized crime situation involving, I think he used the term, "bust-out" of some Long Island company or companies and that the president of that company was Mr. Schustek and I think he indicated that he thought Mr. Schustek would cooperate with the U. S. Attorney's office if he was contacted. That is as much as I recall about knowing fundamentally what went on in that case. It was then assigned or some time assigned to Mr. Coghill. He was responsible for putting the case before the Grand Jury and I think later it was reassigned to Mr. Brodsky who actually tried the case.

THE COURT: May I ask you what the word "bust-out" means to you?

THE WITNESS: Bankruptcy fraud is what it meant to me.

THE COURT: You know it is used differently in this book, it is used to imply a wooden ticket as I read the book.

THE WITNESS: It has been so long since I read even portions of that book, I can't recall.

Q Mr. Hellerman has testified that he described this matter to you as a "bankruptcy fraud".

MR. WEINBERG: Objection.

THE COURT: I will sustain the objection. This witness can't be cross examined on the basis of what Mr. Hellerman may have testified to yesterday.

Q Do you recall Mr. Hellerman describing this to you as bankruptcy fraud?

A I think I just said that "bust-out" to me meant bankruptcy fraud.

Q Do you remember precisely what he told you or do you remember generally what he told you about Mr. Schustek's involvement?

A No, just that he was involved and that there were organized crime people involved.

Q Do you know who else he told you was involved on the organized crime side?

A I remember the name of Mr. Falgiano.

Q Is that the same man referred to as Sammy Feet?

A I think so, but I am not positive.

Q Do you remember any other names?

A Soldano. Is there a Soldano involved in that case?

Q Do you recall whether Soldano was involved?

A The name is in my recollection. I know Soldano was also involved in one of the stock fraud cases, but I think he was involved in that case.

Q Were Falgiano and Soldano regarded as fairly important underworld people who if there were an allegation, serious, substantiated allegation against them, you would take those charges very seriously?

THE COURT: That type of question presents a lot of difficulty because it contains several value judgment words like "serious" or "important" upon which a witness can't be expected to testify because those things are like beauty, they are in the eye of the beholder.

Please reframe the question, that is not really a proper question.

Q When you were told that Falgiano and Soldano were involved in a bust-out or bankruptcy of a company on Long Island, did you regard this as an important potential case?

A I never heard of Falgiano up to that point. Soldano, his name came up I think with the Imperial case, but I considered it to be a case important enough to assign to a good assistant.

Q And do you recall now whether you assigned that case to an assistant relatively quickly, relatively soon after Mr. Hellerman told you about the case and about the organized crime involvement and about Mr. Schustek involvement

A It is probable, but I can't tell you with any recollection at this point, Mr. Dershowitz, the time period that it went on.

I think again, this was a case handled by the FBI.

Q Was the FBI reporting back to you on this case on occasion?

A They were reporting back to Mr. Coghill who was in charge of the case.

Q In other words, what you are saying, although it was an FBI case, there was also an assistant immediately placed in charge.

A I said I don't know whether he was immediately placed in charge.

Q I don't know what you mean by the FBI case. Is that a case given to the FBI without an assistant being immediately placed in charge?

A I don't recall whether there was an assistant immediately placed in charge. I know at some time --

(Continued on next page.)

THE COURT: I think you are using the word "immediately" differently.

Frame the next question.

Q What I meant to ask you is, when you use the phrase "an FBI case" when you used it right now, what did you mean?

A It was a case in which I thought the primary investigation was done by the FBI.

Q As distinguished form the U. S. Attorney's office?

A That is right.

Q In an FBI case, was it your normal practice to immediately assign an Assistant United States Attorney or to let the FBI handle it for a while and only after getting a report back, then assign an Assistant United States Attorney?

MR. WEINBERG: Objection.

THE COURT: What is the ground?

MR. WEINBERG: Normal practice. The witness testified he doesn't recall and we are going over and over again the same territory, your Honor.

THE COURT: I think the witness has testified his best recollection is after he heard about it, he put Mr. Coghill in charge and I don't think his regular

1572

practice is relevant.

Q Is that your testimony now, that you did?

A At some time Mr. Coghill was placed in charge of that case, either by myself or Mr. Baer. That is what my testimony was.

Q You do not now recall whether there was a hiatus between the time you learned about the case, the FBI got into the case and Mr. Coghill was placed in charge?

A That is right, I don't recall.

Q Do you recall Mr. Hellerman telling you and do you recall Mr. Hellerman testifying, that by telling you about this case, he had saved the companies $100,000?

MR. WEINBERG: Objection. There are two parts to that question.

Q Do you recall Mr. Hellerman ever telling you or claiming to you that he had saved the companies $100,000 by informing you about this matter?

A No, I don't recall that.

Q Do you remember any figure? Do you remember him telling you he had saved the companies a lot of money?

A No, I don't recall that.

Q Would it refresh your recollection to look at this memorandum which again appears under your name but which you attribute to Mr. Wing --

1573

THE COURT: Does it have a number?

MR. DERSHOWITZ: It does but we are not using a numbered copy.

THE COURT: Please do because it is important that the record show which exhibit is being used.

MR. DERSHOWITZ: Defendant's Exhibit D.

Q Does it refresh your recollection to see in a memorandum which appears nominally under your name, the statement appears "Because of Hellerman's information, we were able to prevent Falgiano and others from cashing the $100,000 of corporate checks at the gambling casinos."

A What is the question?

Q Whether this refreshes your recollection as to whether or not Mr. Hellerman ever claimed to you or told you that he had saved $100,000 for the companies by his information to you about these Long Island companies and the "bust out".

A No, it doesn't refresh my recollection.

Q Do you recall whether at the time this memorandum was written, you ever read it?

A No, I don't.

Q Is it your usual practice in cases of this kind to read memorandum sent to judges under your name?

A Yes.

1574

MR. WEINBERG: Objection.

THE COURT: He may be examined as to his usual practice.

A Yes.

Q Is there any reason now why you would have deviated from your usual practice in this case?

A No.

Q Did there come a time when Mr. Hellerman told you he desperately needed $80,000 to pay off loan sharks who were breathing down his neck on the Natco deal?

A I don't recall the figures $80,000, Mr. Dershowtiz and I don't recall that the loan sharks were breathing down his neck as a result of the Natco deal.

I guess the technical answer to your question is, no. However. I do recall, to be helpful to you, I do recall a conversation with Mr. Hellerman in which he discussed that he needed money as a result of the fact that loan sharks were bothering him to repay debts that he owed them.

Q Do you recall when that conversation occurred?

A No.

Q Do you recall approximately in your relationships with Mr. Hellerman, when it occured in relation to any event, any indictment, any investigation,before, after the agreement?

A I think it was before Mr. Edwards and Mr. Broderick got involved in the case, if that helps you.

Q Can you pinpoint it with nay more specificity?

A I can only pinpoint it in terms of the return of the $80,000 that somehow the U. S. ATtorney's office or the FBI had come into possession with, to an attorney for Natco.

Q Can you pinpoint his discussions with you about the money that loan sharks --

A It happened shortly before we returned the $80,000, that discussion.

Q Mr. Morvillo, you do not recall at this point whether the figure was $80,000?

A The figure that Mr. Hellerman asked me for?

Q Right.

A That is right, I don't recall that.

Q Would it refresh your recollection to learn that Mr. Hellerman testified yesterday: "I went to Mr. Morvillo and told him I needed $80,000 or approximately $80,000 to pay the shylocks because I would have to start harping at that point if I didn't pay them the $80,000 because the pressure they were putting on was

1576

unbelievable and I wouldn't be able to be on the street and get any more information for them for the government."

A No, it does not refresh my recollection.

Q When Mr. Hellerman told you he needed some money to pay the loan sharks, did you suggest to him a way of getting that money?

A No.

Q Did you ever suggest to him that you could arrange to get official government funds for use by Mr. Hellerman in paying off the shylocks?

A Absolutely not.

Q Did you ever suggest to him that you could get him $80,000 in official government funds or any amount of money, in official government funds in order to have hi pay off the shylocks so they could be immediately arrested

A There was a discussion, I believe it was Mr. Hellerman's suggestion, about the possibility of us turning over the $80,000 check -- I think it was a check or series of checks and again somehow the FBI or the U. S. Attorney's office had come into possession of them and I don't recall how; but there was a suggestion at some point, I think initiated by Mr. Hellerman that he might be able to take the $80,000 and repay the shylocks and we could go in and arrest the shylocks and get the

$80,000 back, and we rejected that suggestion.

Q There was no suggestion, you are certain there was no suggestion that was discussed whereby the government funds the $80,000 given to Mr. Hellerman, Mr. Hellerman would pay the shylocks on condition that Mr. Hellerman consented to the shylocks being arrested right on the spot?

A I don't think so. I think the discussion was not government funds but the discussion, which you are coming very close to, was a discussion of the use of the $80,000 in Natco funds. I think it was $80,000 of Natco funds. Again, I am not sure of the figure.

Q But you are sure, I take it from this testimony, that the amount of money he needed to pay off the shylocks was roughly the same amount of money involved in this check?

A No, I am not sure of that at all.

Q Once this scheme that he proposed to you about getting the money and paying the shylocks which you rejected, once that was rejected by you, did he continue to press you for money to pay off the shylocks?

A First of all you are saying "you" as if I were the sole person who was making the decision. I remind you that Mr. Coghill was in charge of this case. I also

1578

remind you that the FBI was involved in this case and any decision which was made with regard to this, was a joint decision and was also probably participated in by Mr. Baer who was chief of the Criminal Division at that time and perhaps Mr. Seymour who was the United States Attorney.

Q It is your testimony now that Mr. Coghill was clearly involved in the case by the time this event occurred?

A Yes, because -- I do recall that Mr. Coghill had something to do with the return of the $80,000.

Q Do you recall whether Mr. Coghill participated in any discussions with you and with Mr. Hellerman about Mr. Hellerman's need for money to pay off the shylocks?

A I am pretty sure he did.

Q As you sit here now, do you recall whether or not Mr. Seymour was involved in any such discussions?

A Certainly not with MR. Hellerman. It is possible he was briefed on the problem either by myself or Mr. Baer. I have no specific recollection.

Q I would like you to look at Page 256 of the published version of the book and ask you to just read the first paragraph that is on that page simply in order to tell the Court whether to the best of your recollection, this is generally a part of the book that you did review; whether this was within the manuscript pages that you were asked and did review?

A I don't recall whether it was something I reviewed or not.

Q Would reading any further indicate to you --

A No.

Q Would reading any portion of the book indicate to you whether or not you had reviewed that portion of the book?

A I doubt it.

Q You simply at this point do not remember what portions of the book you were asked to review as recently as August of 1976?

A That is right. It is recorded, though. The page numbers I reviewed are recorded.

THE COURT: Unfortunately they are not because you reviewed some page of a typewritten manuscript then it went into galley proofs which had a different page number and the book had a different page number.

We can't tell from the pagination referred to in the letter just exactly which stage of what manuscript you had.

Q You don't remember reading a portion of a a manuscript which suggested that you had paid $80,000 to Mr. Hellerman so that he could pay that money to loan-sharks?

A I don't recall whether I read that or not, that is right.

Q Did there come a time when Mr. Hellerman told you about an $80,000 check drawn on Natco by Mr. Schustek that was being cashed in Paradise Island?

A I don't think he told that to me.

Q Do you know who he told that to?

A Either the FBI or Mr. Coghill, because I know at some point I got that information. I don't know whether it was shortly before or shortly after that we picked up the check. That information came to me around the time it happened.

Q Could you say to the best of your recollection, precisely the information that came to you at that time?

A My best recollection now is that I knew there was some kind of check which was to be gambled away in the Bahamas.

Q Gambled away?

A Yes. My recollection is the way it came to me, to get the money out of the company, several people were going to go to the Bahamas to gamble and that one person was to go on the black side and bet black and one person was to go on the red side of the table and bet red and this way they could show the activity of gambling without risk losing the money so at the end of the night when they accumulated all of the money back, they would still have approximately the same amount of money they started with, but nobody in the gambling establishment could accuse them of coming down there and utilizing the gambling establishment to cash the check, which was really the purpose.

That is the recollection I have of the information. I can't tell you the source of that information.

Q Were you told one of the persons going down to Paradise Island in order to gamble away that money or really gamble it back, was to be Steven Schustek?

A I just don't recall.

THE COURT: This is a rather commonplace way of laundering money?

THE WITNESS: I thought it was pretty ingenious to do it that way. I had never heard of it, done that way, playing red and black.

THE COURT: The theory being it was a corporate check and the trustee in bankruptcy could recover it from any bank?

THE WITNESS: I never really understood the theory of putting Schustek up front and having him claim at a later time he had lost it all gambling because it seemed to me even if he did that, he was liable for the money, unless the scheme also involves Schustek declaring a personal bankruptcy as well. It seemed to me that wouldn't have been dischargeable because of the fraud problems anyhow.

I never really understood the theory as it was explained to me that Schustek was supposed to go up front with respect to that bankruptcy fraud.

Q But you did know there were people in the Bahamas who were there for purposes of cashing that $80,000 check in order to get the money for personal, as distinguished from corporate use?

A Either shortly before or shortly after it happened, that is correct, I knew about it.

Q Shortly before or shortly after what happened?

A They were supposed to go to the Bahamas to do that.

Q But before the government in some way interfered with that?

A I am not sure that I did know that the government

1583

was going to interfere with that. I think that was done by the FBI, it wasn't done by me.

THE COURT: It was obviously done before they bagan gambling?

THE WITNESS: My recollection is theFBI decided since they had knowledge of the scheme, they just weren't going to permit that to happen.

Q Did there come a time when Mr. Hellerman came back to you and said, look, that scheme to get the money from Paradise Island has failed. I need that money?

A Yes.

Q Did he tell you he needed it in order to pay off loan sharks?

A Yes.

Q Did he ask for your help in getting that $80,000 in order to pay off loan sharks?

A Yes.

Q Did there come a time when he told you after the events leading to the release of the $80,000, did there come a time when he told you that that money had been used in fact to pay off loan sharks?

A Not to my recollection.

Q Do you recall a discussion in which Mr. Hellerman told you directly the following, in substance:

"I have to pay the loan sharks back, I can't let them know the money came from Natco because they will then know that I am a government informant, so what I am doing is paying them back in small amounts so they will not know that the money was obtained from Natco."

A No, I have no recollection of any such conversation, and I doubt very much it happened because I don't believe I found out that the money came out of Natco for a long time.

Q Did there come a time when Mr. Hellerman had told you he paid back the shylocks?

1585

A I don't recall that he did tell me that.

Q Did there come a time when he stopped pressing you for money in order to help pay back the shylocks?

A Yes.

Q When did that occur?

A When I told him that I wasn't going to give him the money.

Q Did that occur at about the same time or in the approximate range of time when the Natco check was ultimately released?

A Sure it did, because we released the Natco check a few days after the conversation I had with Mr. Hellerman in which I told him I was not going to give him the money, but the release of the Natco check had nothing to do with Mr. Hellerman's request for the money.

THE COURT: At the time the Natco check was released to Kerlands, Natco was already in bankruptcy?

THE WITNESS: Not to my knowledge.

Q When you agreed to release the check to Natco's lawyer, did you check to determine whether or not Natco was already in bankruptcy?

A It was not my case, Mr. Dershowitz, I did not personally make any check. It was Mr. Coghill's case and when you continue to use the word "you" I hope you are using it in the sense that this was a decision participated in by Mr. Coghill, by myself and with all probability, Mr. Baer who was chief of the Criminal Division at that time.

Q When you participated in the decision to release the Natco funds to Mr. Kerlands, did you check to see whether or not the Natco company was in bankruptcy?

A I did not personally check.

Q When the Natco check was released to Mr. Kerlands, to your knowledge, there was an ongoing investigation of the Natco matter; was there not?

A There was an investigation of the individuals in the Natco matter, yes.

THE COURT: For suspicion of engaging in some type of fraud?

THE WITNESS: For suspicion in engaging in a conspiracy to commit bankruptcy fraud.

Q When Mr. Hellerman talked to you about this case or when this case was referred to, was it referred to as the Natco case or was another corporation mentioned as well?

A I don't recall.

Q Was there in your mind ever a sharp distinction drawn between two corporations, the two Long Island

1587

corporations?

A I don't recall. Again, I was not in charge of this case. I was a troubleshooter, in effect. Whenever there was a problem that Mr. Coghill thought he needed either a more experienced person or a supervisor to get involved with, he came to me.

Q And the decision to release the $80,000 was surely regarded as such a problem?

A It certainly was.

Q And you were therefore consulted as a senior official in the United States Attorney's office for your opinion put on that decision?

A That is correct .

Q At the time you knew, did you not, that there was in process an ongoing bankruptcy fraud?

A No. I knew that there was a conspiracy to commit bankruptcy fraud. I did not, I believe, know there was any bankruptcy fraud that had been committed at that point.

Q You knew there was an ongoing conspiracy to commit a bankruptcy fraud?

A This is right.

Q That the intent of that conspiracy was to loot the companies, to bankrupt the companies? Is that right?

Q Yet you decided to releease the check?

A I participated in a decision to release the check and if you want to know the reason why, I will be happy to tell you.

Q We will get to that in a minute.

You participated --

THE COURT: It isn't necessary to sum up. Just ask him facts.

Q Did you participate in any discussion with Mr. Hellerman in which this suggestion came up that the funds, the Natco funds, or the Merchandise Plus funds, could be released to an attorney for that corporation?

A I don't know whether it was with Mr. Hellerman, but certainly when we made the decision, to protect those moneys, we decided that the moneys should be turned over not to Mr. Hellerman, but to an attorney for one of the companies.

Q How did you communicate that to Mr. Hellerman?

A I am not sure I did.

Q How did you communicate it to the FBI?

A I am not sure I indicated it to anybody other than perhaps Mr. Coghill and Mr. Baer. It was a group decision. We were trying to figure out what to do with that money. We thought we had no legal right to hold the

1589

money. We were afraid if the result of our holding the money the company did go into bankruptcy, the federal government would be accused of putting that company in bankruptcy by holding illegal money which the federal government had no right to be holding, so we tried to figure out a way to legitimately post that money into the corporation's account and we insisted on doing it in writing through an attorney.

THE COURT: Don't you hold money in evidence all the time in this place?

THE WITNESS: Not when there are creditors asking for that money, not $80,000. I don't know of a single instance in which we have held the amount of $80,000 in cash.

THE COURT: That was an overt act, though, carrying the money down to the Bahamas?

THE WITNESS: It may have been but the way we analyzed it at that time, we were going to be liable ourselves for a suit by the creditors or anybody else involved in that company if we deliberately took that money and refused to release it. It was not our money. We had no search warrant with regard to my recollection. We had no legal process which had been issued which gave us any legal right to hold that money.

Q You have testified that you knew at the time you made or participated in this decision there were creditors of this State who were seeking funds.

Did you have any idea of the amount of the creditors, the amount of the assets?

A Personally, no.

Q Was there any discussion as you sit here now during the time that decision was made, was there any discussion as to whether or not Natco was in bankruptcy, whether a referee in bankruptcy had been appointed or whether or not somebody should inquire as to the formal status under federal law of that company at that time?

A I don't recall any such discussion, but it was my recollection on the basis of my knowledge, I had no information to believe that any of those companies were actually in bankruptcy at that point.

Q But you did know, did you not, that if they were not in bankruptcy, that bankruptcy was fairly imminent?

A I didn't know that at all. I knew that that was the purport of the scheme.

Q Did you know the name of the president of the companies?

A I knew that Mr. Schustek had some official capacity with the company.

Q Did you know that he had check writing authority for the company?

A No, I don't.

Q Did you at that time?

A I don't recall whether I knew that at that time.

Q When it was decided collectively the money would be turned over to, I take it, the lawyer for Natco or the lawyer for Merchandise Trust, do you know who the lawyer for the company was?

A Personally, no.

Q Did you make any inquiry as to who the lawyer for the company was?

A Personally,no. It was not my case.

Q Were you ever told that Mr. Hellerman wanted those funds to be released to a lawyer named Morris Winters?

A I don't recall that.

Q At the time that this decision was being made, you were aware, were you not, because you so testified yesterday --

THE COURT: If he testified yesterday, you don't have to repeat it. Let's cut right through and get to the heart of these issues. I have to finish this hearing at some point.

Do I understand this was in the form of cash?

THE WITNESS: I [illegible]'t recall what it was, Judge. Somehow we had either $80,000 in cash or a series of checks or one check which we had come into possession of and when I say "we" it was the FBI that had it.

THE COURT: And they obtained it from a third party, a bank in Florida?

THE WITNESS: I don't know where they got it. I just don't recall now where they got it but the question came up what were we going to do with this. To my knowledge, it was an ongoing corporate business.

THE COURT: You had knowledge it was an ongoing corporate business?

THE WITNESS: That is my recollection, I had knowledge it was an ongoing corporate business.

THE COURT: Where did you get that knowledge?

THE WITNESS: From Mr. Coghill, the U. S. Attorney in charge of the case. He had also been the chief of the Civil Division prior to the time he had this case and I assumed he knew enough about this case to properly brief me.

Q So it is now your testimony, not that you do not recall whether the firm was in bankruptcy but you specifically recall being told by Mr. Coghill it was an ongoing business at the time?

MR. WEINBERG: Objection.

THE COURT: To the use of the word "specific"?

MR. WEINBERG: No.

THE COURT: I think his testimony is on the record and you don't need to go into it any further.

As I understand it, Mr. Coghill told him it was an ongoing business.

THE WITNESS: That is my recollection and I am not sure it was Mr. Coghill who told me that. That was my state of knowledge at the time.

THE COURT: What was the source of the knowledge, from Hellerman or somebody in the office?

THE WITNESS: I just don't recall.

I was being called until --

THE COURT: I understand, you don't have to argue.

Q Do you recall at some point being shown a letter from one of these corporations which was a letter retaining an attorney for that corporation and authorizing him to pick up the $80,000 check?

A I am not sure whether I actually saw the letter but I knew there was some document that had been drafted

1594

to authorize the attorney to take the check.

Q How did you know that?

A Mr. Coghill probably told me.

Q Were you told by Mr. Coghill or by Mr. Hellerman or was it your advice -- withdrawn.

Was it your suggestion that a letter be obtained by the attorney seeking the release of the funds?

A I don't recall whose advice it was.

Q Do you recall that advice generally being given to Mr. Hellerman? Do you recall being told to Mr. Hellerman?

MR. DERSHOWITZ: I withdraw that question.

Q Do you recall advice being given to Mr. Hellerman that if the money is to be released, it had to be through an attorney for one of the corporations?

A I don't specifically recall having that conversation with Mr. Hellerman. I specifically recall telling Mr. Hellerman we were going -- I recall somebody relating the information to Mr. Hellerman if the money were to be released it was not going to be released to him.

Q Was there a next part of that conversation in which you or somebody else to your knowledge had told him how it could be released?

A I don't recall. It is very possible that he was

1595

informed that we will not release that money unless we thought we were adequately protected against the money being porloined.

Q So it is your testimony now that he was told that the money would not be released unless you could be assured that it could be adequately protected against being purloined?

A I think that is the best of my recollection at this point. I think he was informed of that but I am not even sure he was told that by anybody. I know he was told he could not have the money.

MR. DERSHOWITZ: I would like to mark this.

[Defendant's Exhibit F marked for identification.]

Q Does it refresh your recollection to see this letter written by Mr. Kerlands to the United States Attorneys' office stating that he represented one of the companies, Merchandise Plus?

A Are you asking me whether I recall this letter before?

Q Yes.

A No, I don't recall one way or the other.

Q Do you recall having been told that such a letter existed?

A Yes, I am pretty sure that I was told such a letter existed.

Q Do you recall being told that accompanying that letter was another letter authorizing Mr. Kerlands to serve as attorney for Merchandise Plus?

A No, I don't recall.

Q Does this refresh your recollection?

A No, I don't recall ever seeing this letter.

Q Do you recall being told at any time that the letter purporting to give Mr. Kerlands the legal right to represent Merchandise Plus, was written on no letterhead, in handwriting and signed solely by Steven Schustek personally and Steven Schustek as president of Merchandise Plus?

A No, I don't recall that.

Q Do you recall ever having any discussion with anybody in the United States Attorney's office or with Mr. Hellerman, in which the bona fides of the attorney purporting to represent those corporations was ever discussed?

A No.

[Continued on next page.]

Q Do you recall being told at any time that the United States Attorney's office did in fact receive a letter from a Mr. Kerland accompanied by a letter from Mr. Schustek?

A I recall being informed, or perhaps even seeing the Kerland letter. I don't recall ever being informed about the handwritten letter that you have just showed me.

Q Are you testifying now you actually saw the Kerland letter but did not see the attachment to the Kerland letter?

Let me ask you to read the top paragraph of this letter.

A I am testifying that I don't recall whether I saw the Kerland letter and I am testifying that I do not believe that I ever saw the handwritten letter.

I think my testimony is very clear, Mr. Dershowitz.

Q Would you read the first paragraph, please, of the Kerland letter?

THE COURT: You know, we are getting a little far afield.

A I have read the first paragraph.

Q Does the first paragraph state "Please be advised I represent Merchandise Plus" --

MR. WEINBERG: Objection. This letter is not in evidence.

THE COURT: We are getting a little far afield. If the Government received the letter at or about the date it bears; if the U. S. Attorney's office received it, it really doesn't matter for purposes of this hearing whether this witness now remembers ever having seen the letter. The Government is not a collection of individuals. If somebody in the office in authority saw it, it doesn't matter if Mr. Baer saw it or Mr. Coghill or this witness or even the mail clerk.

MR. DERSHOWITZ: This goes to the witness' credibility.

THE COURT: It's fine to attach his credibility but what has he testified to to date which is inconsistent with your theory here?

MR. DERSHOWITZ: He has testified he is certain he did not see the attachment, but he is not certain as to whether he saw the printed Kerland letter.

THE COURT: The U. S. Attorney's office saw both.

MR. DERSHOWITZ: Right.

THE COURT: Does it matter whether it is Mr. Morvillo or Mr. Coghill?

MR. DERSHOWITZ: No, I completely agree with that

It's inconceivable that anybody could have seen the one without the other because they were attached and reference in the first paragraph is made to the attached retainer.

THE COURT: It isn't inconceivable. Many people look at things and don't read.

I don't get the point. If it is a collateral matter to attack the credibility of the witness, first you must be satisfied that the witness has testified to something that hurts your case, or something inconsistent with the testimony of Hellerman. You had Hellerman all day yesterday, this fellow didn't hear what Hellerman said. If you believe he has testified inconsistently with Hellerman in a substantial matter, zero in on that and cross examine him about it but don't get far afield whether he saw a letter addressed to the office or whether he remembers seeing it at this late date.

MR. DERSHOWITZ: We would like to admit into evidence this entire matter which is now designated Exhibit G. As we understand it, it was a Government exhibit previously admitted in the bankruptcy fraud Natco case itself.

Your Honor can of course take judicial notice of.it.

THE COURT: There is no objection to this, I believe?

MR. WEINBERG: May I see it.

THE COURT: Of course.

As I understand it, there was a Defendant's Exhibit G in one of those other trials.

MR. DERSHOWITZ: It was Exhibit G.

THE COURT: Lettered exhibits are usually the Defendant's case.

MR. WEINBERG: Will you receive into evidence any documents received in previous trials?

THE COURT: I didn't go that far. I said any testimony given in prior trials could be offered in evidence and that any dates of proceedings that were taken or dates on which witnesses testified or any matters of that nature, I would judicially notice for purposes of this hearing.

As far as exhibits are concerned, I don't know that I would want to issue a blanket ruling. On the other hand, as I understand it, these are documents which did find their way into the U. S. Attorney's office at or about the date they bear. If that is so, they ought to be admissible.

MR. WEINBERG: I would object to the admissibili of all those documents. I don't see the relevance of them.

THE COURT: You don't say they are not authentic

MR. WEINBERG: I don't have a problem with authe ticity. I do question whether anybody in the United States

Attorney's office may have seen these documents, other than the memorandum from the United States Government, the first document.

THE COURT: As I understand it, both Hellerman and this witness testified, and the book suggests that through the intervention of lawyer Kerland and as a result of letters submitted by lawyer Kerland, the money which had been intercepted from the Paradise Enterprises Limited which belonged to these bankrupts, was turned over to Kerland and we were told in great detail by Hellerman that Kerland deposited it in some bank and that the check was made to Kerland's special account, he took out all but $500 of it and I am sure you remember the rest of the testimony.

As far as this Exhibit G is concerned --

MR. DERSHOWITZ: Your Honor, if there is any problem with authenticity.

THE COURT: He hasn't contended they are not authentic.

MR. DERSHOWITZ: We will of course be happy to confirm their receipt by reference to persons who will testify that they actually received it and read them and saw them.

THE COURT: You see, the last pages of this document which you have offered doesn't really seem to have any direct relevance to what we are talking about here.

Certainly excluding the cover sheet, the first four pages are admissible and I would take those and you can remove the rest and mark the balance of the Exhibit G-1.

MR. WEINBERG: Those first four pages, is there clear indication that clearly the first memorandum was received by the Government? It's a Government memorandum.

THE COURT: I think there is enough testimony here to warrant a conclusion by the Court that some responsible person in the U. S. Attorney's office was in possessio of all of those first four pages at or about the dates they bear. Whether it was Mr. Coghill or this witness or who, is of no consequence.

MR. WEINBERG: I don't think Mr. Morvillo testified that he recalled seeing those documents.

THE COURT: I will overrule your objection as to the first four pages and I will direct that the balance of the exhibit be physically detached and marked G-1 for identification.

xx (Exhibit G, received in evidence.)

THE COURT: The balance will be marked G-1 for identification.

xx (Exhibit G-1 marked for identification.)

Q Do you recall a physical meeting at which you were in attendance and Mr. Kerland was in attendance?

A I don't recall it at this time, but it's certainly possible.

Q Were you aware at the time you participated in the decision to release the funds to Mr. Kerland, that Mr. Kerland had become an attorney for Merchandise Plus, the day before?

A I don't recall.

Q The day before he wrote you the letter or the U. S. Attorney's office the letter?

A I don't recall.

Q Do you recall when you participated in the decision that Mr. Kerland had become the attorney for Merchandise Plus for the exclusive purpose of cashing this check?

A I don't recall. I believe the details of the transaction were really handled by Mr. Coghill and that I was called in again in a policymaking role as to what we should do with this $80,000 that we believe we did not have a right to hold.

How could we get it back to the company in such a way as to insulate us from the charge which you are now making that we were turning the money over to Michael Hellerman.

THE COURT: I don't understand that answer. Was it your feeling that such an accusation would be made against the Government?

THE WITNESS: It was our feeling knowing Mr. Hellerman and Mr. Schustek that that accusation could very well be made against the Government. We believed we were in a very difficult position with regard to that $80,000. I believed at the time there were companies out there which were on-going. Whether that is true or not, I don't know. I believed I had $80,000 of their money. I also had two men, Mr. Schustek and Mr. Hellerman who said they wanted that money because they wanted to turn it over to shylocks. I was not going to give the money to Mr. Hellerman and I was not going to give the money to Mr. Schustek under those circumstances. I believed if we got a lawyer involved in the picture, that he would have enough responsibility to prevent those two men from grabbing that money and giving it to the shylocks and I also believed that the corporation had a right to have their money back.

THE COURT: Let's focus in on this because we are wasting a lot of time here. The only thing we are trying here is compliance or non-compliance with Bradey and Section 3500 in connection with the Belmont Franchising trial, and that is all.

His state of mind, or whether that was a sound approach to the problem is out of the issue in this case, or whether he knew or should have known that Kerland was only a front for Winters is also out of the issue in this case or whether he should have known is a matter of public record, at least one of the companies was already in bankruptcy. That is out of issue. Just a question of what they did had to be disclosed. You have established what they did through this witness and Hellerman and through the exhibits.

Let's please proceed on to something else.

MR. DERSHOWITZ: A few more questions which bear directly on that issue.

Q Do you recall whether or not anybody asked this lawyer, Mr. Kerland, where the funds were going to be deposited?

THE COURT: Do you think you need to prove a negative?

MR. DERSHOWITZ: We would like to know --

THE COURT: If they tried to bring something like that out on cross examination of this witness, I will permit you to go into it on redirect. We are only interested in one issue, what took place, what was done and whether or not they complied with their obligations in the course of the Belmont trial.

Whether any inquiry was made, you don't have to prove a negative. I am assuming right now they didn't make any inquiry. Kerland walked in and presented he was a bona-fide lawyer representing a corporate client. They chose to believe him, that is all. Don't waste my time.

Q Were you aware that Mr. Kerland proceeded almost directly from your office --

THE COURT: No. The record shows he did it. The record shows what they did. You don't have to prove a negative.

Q By the time of the Belmont trial, were you aware that Hellerman had gotten personal benefit from the $80,000 that was returned by the United States attorneys office to Mr. Kerland?

A When did the Belmont trial take place?

Q The Belmont trial was in January of 1973, one year after these events.

A I don't recall. When was the Natco indictment filed?

Q May of 1971, a year and a half before the Belmont trial.

A When was the Natco trial?

MR. SILVERGLATE: The Natco trial started on April 3, 1972. Verdicts were returned on April 14, 1972.

A If I knew, that is probably when I learned, during the course of the Natco trial.

Did it become a matter of public record in the Natco trial?

I don't recall under those circumstances if you want to put the question that way. I was trying to help you but put the question the way you want.

THE COURT: I think I might interrupt at this point while it is fresh in everybody's mind and I don't mean to prolong it.

I will have to have an understandable submission made to me. Both sides will have to cooperate in working this out, which will permit me to make a finding or to be certain of exactly what 3500 material and what Brady material was in the possession of Mr. Edelbaum at the point when the cross examination of Hellerman began in the Belmont Franchising trial. I am finding it very difficult from the trial record in the Ostrer-DioGuardi case to be certain precisely what Mr. Edelbaum had and didn't have, because that is crucial to the whole situation, and I must be informed as to what documents were furnished to him and I would like to have copies of them, except if they have no bearing. I am talking about 3500 material for Hellerman and all Brady material.

MR. DERSHOWITZ: We can probably stipulate to that. Those are all matters of public record.

THE COURT: I don't know that I would be satisfied.

I want a copy or a set of papers so I can have in my hand exactly what Mr. Edelbaum had in his hand when he began the cross examination of Hellerman.

MR. DERSHOWITZ: That is what I meant.

THE COURT: That is what is going to be the testimony and it isn't only what they were, what inferences would a reasonably competent trial attorney draw from those papers as far as guiding the course of his cross examination.

MR. DERSHOWITZ: I think we will be able to stipulate as to the documents and produce the documents.

THE COURT: That is what I want you to do. Deriv from the trial record of whatever subsidiary record you need, what those documents are and to the extent possible, make me up a binder or a folder what he had.

MR. WEINBERG: I don't think that will be a problem.

THE COURT: As soon as you can do that without placing an undue burden, the better.

Q To your knowledge, did there come a time when the United States attorneys office learned, to your knowledge, that Mr. Hellerman had used all or part of the $80,000 from the check at issue to pay off shylocks?

A They know that now, so the answer has to be yes.

Q Did there come a time prior to the institution of this new trial motion to your knowledge when the Government learned that fact?

A I don't know.

THE COURT: Let's ask whether the time was prior to January 26, 1973.

Q Prior to January 26, 1973?

A I don't know. I think the person who would be best able to answer that question foryou is the person who tried the Natco case and that is Mr. Brodsky.

THE COURT: If it is in the Natco trial record, of course you had constructive knowledge of it. The whole office did.

THE WITNESS: As well as the defense.

MR. DERSHOWITZ: That is a question we will prepare a brief on, your Honor.

THE COURT: No use preparing the brief until you find out whether it is in the record or not.

(Continued on next page.)

Q Mr. Morvillo, did you ever have any discussion with either Mr. Hellerman or any of his attorneys in regard to restitution by Mr. Hellerman to any of the victims of his scheme?

A Subject matter of restitution came up when we were negotiating the written agreement.

Q Can you describe to us whether or not you understood that Mr. Hellerman was promising to make a certain amount of restitution?

A No. As a matter of fact we decided not to make that part of the agreement. We deliberately decided not to make that part of the agreement, Mr. Dershowitz and that was our decision, a decision of the United States Attorney's office.

At one point there was a discussion betwee myself, Mr. Edwards and Mr. Broderick. I don't remember whether Hellerman was there at the time or not. I think probably he was not. It was about restitution and about the possibility of us putting in a provision in the agreement for restitution, and I think the sum suggested was $100,000 cr some figure like that.

After discussing it with the assistants in charge of the particular matters that were active at that point, I think that was probably Mr. Schreiber, Mr. Wing and Mr. McGuire we decided that we could not put a dollar figure on the amount of money that Mr. Hellerman owed. There was a possibility that it was far greater than $100,000 and there was also the claim by Mr. Hellerman that a lot of the money which he got never really stayed with him but were distributed to people like Johnny Dio and Mr. Ostrer and people like that.

Q You recall a claim --

A I am just using that in a hypothetical sense.

Q Do you recall Mr. Hellerman said money that was distributed to Mr. Ostrer or people like that?

A People like that. People who were in the organized crime field. Mr. Ostrer, Mr. Dio, Mr. Tramunti, those kinds of people.

Q Did Mr. Hellerman say people like Mr. Ostrer?

A No, I told you he didn't say people like Mr. Ostrer.

Q So this is your characterization?

A Yes. The use of the word "Mr. Ostrer" sure, I thought it was relevant to this hearing since we are here for Mr. Ostrer.

Q You thought it was relevant --

THE COURT: Don't argue, gentlemen, that isn't necessary.

A Do you have a question?

Q You are in the middle of answering one.

A I don't recall the question.

Q We were talking about your discussions with Mr. Edwards and Mr. Broderick about restitution.

THE COURT: They had first suggested restitution

THE WITNESS: And we, the U. S. Attorneys Office decided since we couldn't figure out the appropriate amount of money, that we would not put a restitution figure in the agreement and it was up to Mr. Hellerman and the sentencing judge to determine what was an appropriate amount of restitution to be made.

Q Were you aware at some point that the sentencing judge and Mr. Hellerman's attorneys, Mr. Hellerman did arriv at some figure as to what was to be paid?

A I don't recall whether I was aware of that or no

THE COURT: Certainly the office was, because it was in the judgement of conviction, so don't waste time on those things.

Q Were you aware, Mr. Morvillo, Mr. Hellerman test fied at several trials that he had in fact made some restitution?

MR. WEINBERG: Objection. The Belmont case was the first case he testified in. What he testified to in later trials doesn't seem to matter at all.

Q Are you aware that Mr. Hellerman testified in the Belmont trial that he had made restitution of $12,500 or thereabouts?

A I don't think so. I don't think I have ever heard Mr. Hellerman's testimony in any case.

Q Were you aware Mr. Hellerman had stated under oath he had made restitution of $12,500 in any proceeding?

A I don't think so. It's possible that some assistant U. S. attorney in discussing one of the trials with me or one of the problems that came up in connection with one of the trials alluded to that, but I have no specific recollection of being aware of that fact.

Q Are you aware that Mr. Hellerman did not make any restitution?

A No, I am not aware one way or the other what Mr. Hellerman has done.

THE COURT: My understanding is he did make some restitution but not $12,500 worth.

MR. DERSHOWITZ: We are at somewhat of a disadvantage on that.

THE COURT: If I had known what he was going to say yesterday, I would have released that other paper to you. Take it as not important but that he did make restitution, something less than $12,500. It can be inferred th at all times either the attorneys or somebody was holding $12,500 for purposes of restitution. You have to remember that some of these people were partners in crime with this fellow and not entitled to restitution under New York State Law.

The case is Flegenheimer v. Brogan. Flegenheimer was known as Dutch Schultz, but the Court of Appeals of the State of New York said we will not act as paymasters among thieves, in addition to which, he had fleeced so many people, you couldn't really tell who was entitled to the money. It would have taken some kind of chancellory proceedings to parcel it out.

Q Mr. Morvillo, do you recall a conversation with Mr. Hellerman in which he told you that he needed to retain counsel?

A He always had counsel of one kind or another throughout my entire dealings with him.

Q Do you recall at one time he told you he had to change counsel from Mr. Winters to a different kind of lawyer?

A Not really. I do recall the time that Mr. Broderick was retained; if that is what you are alluding to.

Q Do you recall any discussion with Mr. Hellerman about the retention of Mr. Broderick?

A Yes.

Q Did you suggest to Mr. Hellerman that he retain Mr. Broderick?

A No.

Q Were you asked by Mr. Hellerman whether or not the retention of Mr. Broderick would meet with your approval?

A Mr. Hellerman asked me what I thought of Mr. Broderick and I told him what I thought of Mr. Broderick.

Q Did there come a time when Mr. Hellerman came back to you and said, in effect, I have been to Mr. Broderick, I have been to Mr. Nizer's office and they have decided to charge me a fee of $100,000?

A I am not sure he mentioned a specific amount of money. It is possible, but I do recall him contacting me after he had been there and I think it was by phone and not in person and saying that he had been to see Mr. Nizer. Mr. Broderick was there and that they had asked for, what in his opinion was, a very substantial amount of money. I don't recall what the dollar figure was, Mr. Dershowitz.

Q Did he tell you that he regarded that fee as excessive?

A Yes.

Q Did he ask you to be in touch with Mr. Broderick, to call or speak to Mr. Broderick?

A About the fee?

Q I asked you a question.

Did he ask you at that point to call or talk to Mr. Broderick?

A Yes.

Q Did he tell you to call and talk to Mr. Broderic in the same conversation that he had complained about the excessiveness of the fee?

A Probable. I mean that is my best recollection. Let me put it to you that way.

Q Did he ask you to speak to Mr. Broderick and inform him of certain facts, so that the fee might be reduce

A First he asked me if I would call Mr. Broderick and get the fee reduced and I told him I didn't think it was appropriate. Then he asked me whether or not I would advise Mr. Broderick as to the nature of his relationship with the Government, and I said I would be happy to do that.

Q At the time you said you would be happy to do that, you were aware, were you not, that the intended effect of the call was to have Mr. Broderick reduce the fee?

MR. WEINBERG: Objection.

THE COURT: I think that is clear from the recor already, isn't it? Has not the witness already told us that

MR. WEINBERG: Your Honor, the allegation that

Mr. Ostrer has made is that Mr. Morvillo talked to Mr. Broderick about actually reducing his fee.

THE COURT: That is a different question as I understand it.

THE COURT: As I understand, Hellerman told him he thought the fee was excessive and about the same time he asked the witness to please call Mr. Broderick and tell him he was a cooperating individual. That is all I heard him testify to.

THE WITNESS: He also asked me to call him to get the fee reduced and I told him I would not.

Q Did you then call Mr. Broderick?

A I called Mr. Broderick and invited him to come to my office.

Q Did you then inform Mr. Broderick of the actual circumstances involving the Government's relationship to Mr. Hellerman?

A Yes, in a general way.

Q Did Mr. Broderick at that point indicate to you in any way that that information would be relevant in his determination about fees?

A I don't believe so.

Q Was there any discussion whatsoever in your discussions with Mr. Broderick, any discussion one way or the other, substance or words about legal fees?

A Not to my recollection.

Q Did you learn after that meeting that Mr. Nizer's firm had agreed to reduce the fee?

A I learned after that meeting that Mr. Nizer's firm had been retained by Mr. Hellerman. I don't believe I ever learned what the fee was. I didn't think it was appropriate.

Q I didn't ask you that.

A I don't believe I ever learned that they reduced the fee, but again it is possible that Mr. Hellerman may hav mentioned that to me somewhere along the line. It is certainly possible. I have no recollection of it.

Q Did Mr. Hellerman ever tell you that he was keeping the letter from the Nizer firm which indicated the initi fee of $100,000 to be able to show to the wise guys on the street in order to persuade them if anybody ever asked, that he was a real contesting litigant and needed a $100,000 lawyer?

A No. I am pretty sure -- I have no recollection of his ever telling me that.

Q In substance?

A In substance.

I recall him saying that he thought he needed a good lawyer to help convince everybody that he was actually going to go to trial, but I don't believe that put that in the context of the amount of money he was paying in legal fees.

Q Did there come a time, Mr. Morvillo, that you learned Mr. Hellerman had been stopped at an airport in New York and prevented from leaving on a planned trip to Europe?

A Yes.

Q Could you describe from whom you learned that information and when you learned that information?

A I think I learned that information from Mr. Weinberg within the last three or four weeks.

Q Did you at any time prior to January of 1973 know that Mr. Hellerman had been planning a trip to Europe?

A Oh, sure.

Q Did you at any time prior to 1973, January, learn that Mr. Hellerman had been delayed in his leaving for Europe?

A I really don't recall having learned that, but again, I wasn't in charge of any of the Hellerman cases at that point but it's possible some assistant U. S. attorney may have mentioned it to me but I don't have a recollection of it.

THE COURT: We will take a brief recess at this point, gentlemen.

(Recess.)

BY MR. DERSHOWITZ:

Q Mr. Morvillo, I think you said as you were breaking that you were not in charge of Hellerman's cases, but it's a fair characterization of your responsibility that at least during a certain stage of Mr. Hellerman's relationship with the Government, you were the lawyer in charge of Hellerman, is that not correct?

A Certainly from the early part until probably I assumed the responsibility of being Chief of the Criminal Division.

Q At those early stages, when Mr. Hellerman told yo about his involvement in certain crimes, did he not also tell you about certain members of his family who were also involved in crimes?

A I don't think so.

Q Did he ever tell you that he used his mother's, his mother and sister and cousin as nominees for various of his stock swindles?

A I don't recall whether he ever got into that wit me.

Q Do you recall him telling you --

A You have to understand, Mr. Dershowitz, my relationship with Mr. Hellerman was that of an informant. He was the FBI's informant. He was supposedly giving them information on a day-to-day basis. He was not to be a witness because that was the deal we had made, so I really wasn't debriefing him about all of the things he participated in or anything like that. We were looking to debrief him, and primarily it was the responsibility of the FBI. They were looking to debrief him with my back up support.

On all the information he had in his possession against organized crime. That was our primary interest. We believe Hellerman was deeply involved with the figures involved with organized crime and our primary effort in those early six months and you are really talking about a period from the fall, the year the Imperial case was filed until I became Chief of the Criminal Division.

That time was devoted to learning what Hellerman knew about organized crime.

Q In order for Hellerman to feel free to disclose this information he certainly asked of you certain consideration, did he not?

A The only consideration he was granted at that particular time was that he was going to be permitted to plead guilty to a count of an indictment. That was the only commitment we made to him.

Q You do not recall if he told you, for example, that his counsin Ira Schultz was the initiator of the Natco deal? That he was the one --

A Somewhere I learned the name of Ira Schultz. Ira Schultz was indicted, wasn't he?

Q We will get to that in a minute.

Did you know Ira Schultz was a relative of Mr. Hellerman?

A I think I learned that somewhere along the line.

Q If you were not aware that various of his relatives were involved in crime, why then did you have to promise him that members of his family would not be prosecuted

A I never promised him that members of his family would not be prosecuted to my recollection.

Q You never promised him in any formal manner that his mother and other members of his family would not be prosecuted?

A Not to my recollection.

Q Did he ever discuss that subject with you?

A I just don't recall.

Q Did his lawyers ever discuss that subject with you?

A Whatever commitments were made to Hellerman were reduced to writing, at least between myself, Mr. Edwards and Mr. Broderick. If the agreement says that none of his relatives would be prosecuted, obviously I made that commitment to him.

Q Are you aware as you sit here now, whether that agreement states about anything whether his relatives would be prosecuted?

A I don't recall what the agreement states on that issue.

Q You do recall everything in the agreement, every agreement you made with him was reduced to writing?

A That is what we tried to do.

Q For example, did you have an agreement with him he would not be prosecuted in the Natco case?

A When I looked through the agreement the other day, I noticed that the Natco case was not in the agreement, so I assume we do not have an agreement with Mr. Hellerman that he would not be prosecuted in the Natco case.

Q Do you have any independent knowledge other than your review recently of the agreement, any independent recollection that there was no understanding that he would not be prosecuted in relation to the Natco case?

A I am not sure I understand the question.

Q Your testimony I take it is that you read through the agreement. Natco is not mentioned in the agreement. Therefore you conclude there was no agreement relative to Natco.

I am asking you, independent of the agreement that you read recently, do you have any independent recollection as to whether or not there was an agreement with Mr Hellerman or an understanding or promise that he would not prosecuted for Natco.

A No. My understanding, Mr. Dershowitz, is that all the commitments we made to Mr. Hellerman were reduced t writing and put in the agreement and I can't tell you why Natco was left out of the agreement.

Q Is it fair to say any crimes that you knew abou Mr. Hellerman committing that were not in the agreement, th was an understanding that he would be prosecuted for?

A No, nobody was going to bind me what cases will be prosecuted.

Q Certainly the agreement binds you as to what ca will be prosecuted.

A It binds me as to what cases will not be prosecuted, not what cases will be prosecuted.

Q Was Mr. Hellerman prosecuted in the Natco case?

A Not to my recollection.

Q You would know if Mr. Hellerman --

THE COURT: That is a matter of record.

Q I am asking you if you recall.

A I don;t know what cases he pleaded guilty to.

Q Those are in the agreement?

A It may be but I don't recall what they are.

Q You just read the agreement?

A I read the agreement two or three days ago. I still don't recall what cases he pleaded guilty to.

Q Do you recall a statement in the agreement that says "the Government shall prosecute Michael Hellerman with regard to violations of the criminal law which may have been involved," shall prosecute.

A Do I recall that clause, no. Do you want to show it to me?

Q Yes

THE COURT: He had already copped out in Imperial before the agreement was even signed.

MR. DERSHOWITZ: He had copped out in Imperial before the agreement was signed, but the record will reflect, your Honor --

THE COURT: Show the witness the exhibit. He can look at it to refresh his recollection.

Which paragraph are you talking about?

MR. DERSHOWITZ: The paragraph that deals with what will happen in the event Mr. Hellerman violates any of these provisions and the Government used the word "shall" in conjunction with the words "free to prosecute."

A Where is it now, Mr. Dershowitz?

Q The last paragraph on that page.

Were you the author of this agreement?

A No.

Q Were you the responsible Government lawyer for this agreement?

A No.

Q Was there any other Government lawyer responsible for this agreement?

A Sure. The United States attorney was ultimately responsible for that agreement.

Q Other than the United States attorney himself, was there any other Government lawyer other than yourself that was responsible for this agreement?

A I don't know what you mean by the word "responsible" in that context. There were other assistants who were consulted before we entered into that agreement.

Q This agreement contains your signature and yours alone as a Government official.

A That is right.

Q In other situations, your name appears on Governmen_ documents and there are other assistants who may or may not have been primarily responsible, but you were only a normal signatory.

I am asking you, in this case were you the nominal signatory or the contracting agent for the Federal Government?

A I was the contracting agent for the Federal Government with regard to that agreement. I believed at the time I signed that agreement, I was binding the U. S. Attorneys Office for the Southern District of New York.

Q Are you aware as you sit here now, that the Natco case was nolle prosquied against Mr. Hellerman in October of 1973, that is, more than a year after this agreement was written?

A No, I am not aware of that and obviously that took place six months after I left the U. S. Attorney's office.

Q Were you aware of any agreement with Mr. Hellerman or his attorneys that that case would be nolle prosequed at a particular time?

A No.

Q Were you ever involved in any discussion with Mr. Hellerman as to whether or not the Natco case would be prosecuted?

A Not to my recollection.

Q To the best of your recollection, did Mr. Hellerman, to the best of your recollection, did Mr. Hellerman understand that he would not be prosecuted for Natco?

MR. WEINBERG: Objection.

THE COURT: Sustained.

MR. DERSHOWITZ: I was just asking him to the best of his recollection, if he knows.

THE COURT: The question is bad as to form. A witness can't testify as to his conclusions what somebody else's understanding was. He may be asked if he told Hellerman that in words or substance or present when somebody else told Hellerman but I can't be asked what you are thinking about.

Q Did Mr. Hellerman or any of his attorneys convey to you in any manner or belief, a conclusion, an understand that Mr. Hellerman would not be prosecuted in the Natco case

A No. I don't ever recall discussing the Natco case with Mr. Broderick and Mr. Edwards. I believe if we discussed it and focused on it, it would have been in the agreement.

The only explanation I have for why it is not in the agreement, is that it was overlooked by both sides.

Q In other words, it is possible there was an understanding that he would not be prosecuted in the Natco case that was not reflected in the agreement because it was overlooked?

A There wouldn't have been any understanding if it was overlooked. There could have been an understanding if it had not been overlooked but how could you have an understanding if it is overlooked.

Q One month after the signing of this agreement, do you recall whether you felt free to prosecute Mr. Hellerman for Natco?

A I don't recall what my state of mind was with regard to the Natco case was one month after the signing of that indictment.

THE COURT: At the time of this agreement, did you understand that he had engaged in a lot of other criminality that was not necessarily barred by the statute of limitations? You knew this wasn't the only things he had done?

THE WITNESS: What Mr. Broderick and Mr. Edwards was trying to do was to draft an agreement which covered all crimes that we were cognizant of that were within the statute of limitations. I think that is what their purpose was. You will have to ask them, but that is my recollection of the negotiations which were, let's let Mr. Hellerman plead to three indictments to cover everything he had basically done

But we wanted to know on the record what that was so that everybody would be protected and there wouldn't be any misunderstandings in the future as to you did know that at the time the agreement was signed, consequently you are bound, so we decided to categorize them.

I don't know why Natco wasn't included.

Q You read this agreement --

THE COURT: Please proceed. He told us that.

Q Do you know now whether having read the agreement there was an agreement not to prosecute members of Mr. Hellerman's family?

A The agreement will have to speak for itself. I don't have any independent recollection.

Q Do you have any independent recollection of Mr. Edwards raising that matter with you in your discussions wit Mr. Edwards?

A No, I don't have any independent recollection of his raising that with me, but if it was raised and we made a commitment, I believe it would have been included in the agreement.

Q Getting back to the airport for a moment.

You testified that you were aware that Mr. Helle man was leaving for Europe on a trip

THE COURT: He did tell us that. Please proceed

Q Can you tell us whether or not you knew his itinery?

A I don't recall. It may have been attached -- was there a motion made to extend his bail limits?

Q There was.

A Was his itinery attached to that?

Q I think it was.

A Then it may have come to my attention.

THE COURT: You see, here is the evil we are getting into. If a motion was made on notice to the Government before Judge Lasker to allow Hellerman to go to Switzerland, England, France and Germany and wherever else he went and Judge Lasker entered either an oral order or written order enlarging his bail limits, then that fact is known to the U. S. Attorney's Office and it really doesn't matter as far as I can see whether this individual, Mr. Robert Morvillo personally knew it at the time or whether he remembers now that he knew it at the time. If the Government had actual notice. This is quite clear. There are numerous Second Circuit cases. If the U. S. Attorney's Office had notice of the proceedings before Judge Lasker allowing this fellow to go to Europe, that is it; so don't waste his time, my time or your own.

Please let's move along.

Q Was there any discussion between you and Mr. Edwards about whether or not Mr. Hellerman might be taking funds with him to Europe to salt away in a Swiss account?

A I believe I raised that question with either Mr. Edwards or with Mr. Broderick and I got a representation from one of them that that was not the purpose of the trip and to the best of their ability, they were satisfied that was not going to happen.

I also believe I raised the possibility with him that Mr. Hellerman was going to run away and I also got a representation from either Mr. Broderick or Mr. Edwards, they were interchangeable at that point, that to the best of their knowledge, this trip was not for the purpose of Mr. Hellerman running away and they gave me whatever representation they could as an attorney that he wasn't going to run away.

Q And they told you that the purpose of the trip was to find a possible place to relocate in Europe?

A That was part of it. I think they also told me that he simply needed a vacation.

Q Did Mr. Hellerman tell you any time prior to that he wanted to find a place to relocate so he could be near the source of his funds?

A No.

Q Did you become aware at a certain time that Mr. Hellerman's trip -- I am sorry, before this new trial motion, did you become aware before January of 1973 that Mr. Hellerman had to postpone his trip?

THE COURT: For the one day period?

MR. DERSHOWITZ: Yes.

A I don't recall.

Q You were never told anything, you can't recall being told anything about an episode with Mr. Lichtman having him stopped by the Port Authority Police at the airport and your office being called and asked whether he was free to leave?

A I don't recall.

Again, I wasn't the assistant primarily in charge of Mr. Hellerman at that time. I believe I was in charge of the Criminal Division and if that issue came up, it would have gone down to Mr. Wing, Mr. Schreiber or Mr. McGuire or anyone handling one of the cases in which Mr. Hellerman was involved.

Q Did you in fact have a drawer on your desk or in your office which included all notes that you might have taken in reference to information given to you by Mr. Hellerman during the period of time that he was an informer?

A I had a drawer in my office.

Q Did that drawer to your knowledge contain a file which would have included all notes that you took of conversations with Mr. Hellerman?

A I doubt it.

Q As you sit here now, are you aware of any single occasion when you took notes of anything that Mr. Hellerman told you about crimes prior to January of 1973?

A I have really been trying to do everything I can for you on this issue in my mind, Mr. Dershowitz.

I don't recall ever taking any extensive notes o conversations that I had with Mr. Hellerman. The matters tha I dealt with him on substantively were only really threefold. They were Belmont, Imperial and Carson. In the Carso case we had FBI agents all the way around the line so I know they took all the notes.

In the Imperial case, by the time Mr. Hellerman began to cooperate, I had already drafted the indictment, so I am pretty sure I didn't need any notes from Mr. Hellerman with regard to that case; and in the Belmont case, I do have some recollection of talking to Mr. Hellerman about his participation in the Belmont case but I have no recollecion of reducing that to notes.

Q Do you recall a meeting with Mr. Hellerman in which Mr. Doonan was a participant?

A Mr. Doonan and Mr. Hellerman, no, I don't recall any meeting in which they were together.

Q Do you recall there was no such meeting?

A I said I don't recall any meeting that they were together.

Look, I met Mr. Hellerman on a number of occasions. I met him with a lot of assistant U. S. attorneys, with a lot of FBI agents, with Mr. Broderick and Mr. Edwards and I met him at a lot of different locations. Sometimes in the U. S. Attorney's office, sometimes in various hotels, one time at Mr. Broderick's office, one time at his home out at Bayside and I can't at this point list for you exhaustively, all the people I met with, where those meetings took place and what we discussed at those meetings.

Q Looking at 269 of the book and reading the paragraph, the second paragraph on the page, and asking you whether that refreshes your recollection as to whether or not you might have looked at that paragraph in your review of the manuscript for the publisher.

THE COURT: May I suggest the witness look at the bottom of 269 to identify the hotel?

A You know, I just don't remember this meeting at all. I don't remember meeting with Mr. Doonan and Mr. Hellerman and Mr. Broderick. I am not saying it didn't happen, I just don't recall it.

I will tell you this: If Mr. Doonan was taking notes, I wasn't.

Q Mr. Morvillo, if such a meeting did occur and if such notes were taken at said meeting, can you tell us where those notes would now be?

A Probably in the automated file.

THE COURT: Mr. Doonan was your subordinate at that time?

THE WITNESS: He was an investigator employed by the U. S. attorney's office.

Q Can you tell us very briefly what documents you reviewed in preparation for this testimony today?

A I looked at Mr. Silverglate's affidavits and the exhibits attached thereto.

Q Including the text of the book?

A No. I only received the affidavits and I think there were two or three exhibits attached thereto. There was the agreement and a couple of other things.

Q So since the time you were asked to review the manuscript, you have never again seen either the galley proofs or the published version of this book?

A Mr. Fischetti and Mr. Shargall who share office space with me, they have a copy of that book and he showed the dedication.

THE COURT: You mean the author didn't send you an autographed copy?

THE WITNESS: No, I don't have a copy of that book.

THE COURT: Didn't you have to get permission for the dedication to be in there?

THE WITNESS: I didn't know about it until Mr. Fischetti and Mr. Shargall told me.

MR. DERSHOWITZ: Your Honor, none of us were aware of the dedication until the published book came out.

A I read Mr. Silverglate's affidavits, and I think that is it.

Q You said you read the agreement, did you not?

A Yes. The agreement was an exhibit. Whatever exhibits were attached to the affidavits that Mr. Weinberger sent me.

Q Can you tell us briefly who you spoke to in preparation for this testimony?

A It is hard to say it was in preparation for this testimony, but I have spoken about the possibility of this testimony with Mr. Edwards, Mr. Wing, with Judge Broderick, with Mr. Weinberg, with Mr. McGuire and probably with Mr. Abramowitz.

5/11

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THE COURT: You told these people you were going to testify or you had discussed the underlying circumstances with them?

THE WITNESS: Well, for instance, with Mr. Edwards, I discussed with Mr. Edwards his recollection as to the Switzerland trip.

With Judge Broderick, I discussed his recollection of the so-called allegation that I hondled him on his fees. With Mr. Maguire, I don't think we got into any substantive discussion at all. It was just that I happened to be in his partner's office and stopped by a week or two before and he said he thought he might have to testify as well as me.

With Mr. Weinberg we prepared for testimony in the way that the attorney and the witness normally prepare for testimony and with Mr. Abromowitz, there was a discussion of the fact that Mr. Silverglate had written to me and asked me to be interviewed.

Q Did anybody in the U. S. Attorney's office tell you --

A With Mr. Wing we discussed something about surrender date and safe houses and things like that.

Q Did anybody in the U. S. Attorney's office tell you that the United States Government looked pretty bad on the Natco deal?

A Any of the Assistants?

Q Yes.

A No, I don't think any of the Assistants told me the Government looked pretty bad on the deal.

Q Did you have any occasion to speak with Mr. Hellerman?

A I have seen Mr. Hellerman in passing in the halls in the last few days. We did not talk substantively in this matter.

Q Did you speak by telephone or communicate by mail about this?

A With Mr. Hellerman?

Q Yes.

A No.

MR. DERSHOWITZ: No further questions.

CROSS-EXAMINATION

BY MR. WEINBERG:

Q Mr. Morvillo, let me direct your attention once again to the time that Mr. Hellerman asked you for certain monies that he wanted to pay to shylocks. Could you please tell us to the best of your recollection the substantive of that conversation with Mr. Hellerman?

A I believe I was informed either by Mr. Hellerman or Mr. Coghill or both that Mr. Hellerman wanted us to release moneys which the FBI had seized down in Florida or the Bahamas, something like that, to Mr. Hellerman because Mr. Hellerman was deeply indebted to the shylocks and Mr. Hellerman was afraid they would do some violence to him if he did not repay them.

I told Mr. Hellerman I would not release that money to him under those circumstances.

There was a discussion whether it would be possible to release that money to him temporarily so he could pay the shylocks, then we could go in and immediately arrest the shylocks then recover the money, so the money wouldn't be out of our possession. That idea was rejected.

I believe Mr. Hellerman was then informed we were simply not going to give him the funds.

Whether he was actually informed we would give the funds to an attorney representing the companies, I don't recall.

Q Mr. Morvillo, did you subsequently have a conversation with Mr. Hellerman in which you told him what might happen if the government found out that Natco funds were improperly used?

A Yes. I told him and I told Mr. Schustek that we believed they wuold be liable for prosecution if we subsequently learned that the funds were purloined.

It is conceivable that either myself or Mr. Coghill also told that to Mr. Kurland.

THE COURT: That Mr. Kurland would be subject to prosecution for lending his name to a fraud?

THE WITNESS: That is right.

We were trying to get some independent responsible person in here who we thought would not take these moneys and give them to Mr. Hellerman and we thought by having an attorney in the picture who was concerned about his license and his responsibility as an officer of the court, that that would protect that money from being stolen.

I gather on hindsight, that was not so.

THE COURT: The fact he was an office roommate of Winters was not known to you?

THE WITNESS: I don't believe I knew that, nor do I believe at that particular time I knew very much about Mr. Winters other than he was Me. Hellerman's attorney of record.

THE COURT: You didn't know he was a crook?

THE WITNESS: Not at that time. I don't think I met with Winters until later than that but I am not positive.

Q Mr. Morvillo, have you ever had a conversation with Mr. Hellerman in which you told Mr. Hellerman that Mr. Winters would receive immunity if he came and spoke to you?

A Absolutely not.

Q Did you ever have a conversation with Mr. Winter in which Mr. Hellerman was present in which there was any discussion about immunity for Mr. Winters?

A There was discussion with Mr. Winter and what Mr. Winter was told was precisely the opposite.

Q What did you tell Mr. Winters?

A I told Mr. Winters there were no commitments being made to him whatsoever on behalf of the United States Attorney's office to induce him to talk to me.

Q Mr. Morvillo, at the time of the trial in United States v. Ostrer, January 1973, did you have any knowledge that Mr. Hellerman at any time had taken money out of this country and deposited it in a Swiss bank account?

A Absolutely not. I was busy on another trial in January, 1973.

Q Do you know of any other Assiscant United States Attorney who communicated to you his knowledge that Michael Hellerman had taken substantial sums of moneys out of the country and deposited those moneys in a Swiss account?

A Absolutely not.

Q Mr. Morvillo, have you ever had any discussion with Mr. Broderick concerning the legal fee Mr. Broderick with the Nizer firm was going to charge to Mr. Hellerman?

A Within the last two weeks.

Q Prior to January of 1973, did you have any conversation with Mr. Broderick about the legal fee that Mr. Broderick was going to charge Mr. Hellerman for the representation he or the Nizer firm was going to give to Mr. Hellerman?

A Not to my recollection.

Q Did you have any conversation prior to January 1973 with Mr. Edwards as to the legal fee to be charged to Mr. Hellerman?

A Absolutely not.

Q Do you ever recall discussing with Mr. Hellerman where the subject of immunity for his family members came up?

A No, not to my recollection.

Q Prior to January of 1973, did you have any conversations with Mr. Hellerman concerning the position the government might take if he were to file a Rule 35

1644

motion to reduce his sentence?

A Prior to January of 1973?

Q Prior to the time Mr. Hellerman testified in United States v. Ostrer, did you discuss with Mr. Hellerman or his attorneys what position the government would take if he were to file a motion to reduce his sentence?

A I don't recall.

Q Mr. Morvillo, at the time that you were requested to prepare an affidavit and collect correspondence that you had with Mr. Callagy, did you inform me that there miight have been an additional letter in which you told Mr. Callagy the specific names of certain Assistants who were involved in Mr. Hellerman's cases?

A Mr. Weinberg, I just don't recall that conversation. It is possible that we had that conversation, as I said to Mr. Dershowitz but as I sit here now, I just don't recall the substance of that conversation.

Q Mr. Morvillo, do you recall every receiving a telephone call from a New York City detective telling you that Mr. Hellerman was about to leave the country to go to Europe?

A No, I do not.

Q Do you recall ever receiving a phone call from possibly a New York City Port Authority policeman or any other government official telling you that Mr. Hellerman was going to leave the country and go to Europe?

A No.

MR. WEINBERG: I have no other questions, your Honor.

THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q You testified just now that the purpose of giving the check to a lawyer was to "to seek an independent responsible person."

THE COURT: Whatever he testified to, I did hear.

Q Can you tell the Court what steps you took to determine his independence, his responsibility and the fact -- let's just stay with his independence.

A I took none, Mr. Dershowitz, because it wasn't my case.

Q Are you aware of any steps taken by anyone in the U. S. Attorney's office to determine his independence?

A No. I don't know what Mr. Coghill did. That was his matter.

Q You were being asked advice on this.

Did you advise Mr. Coghill that he determine

1646

whether or not that attorney was "independent"?

A I don't recall.

Q Do you recall whether or not you advised Mr. Coghill to determine whether or not that attorney was "responsible"?

A I don't recall.

Q Do you recall whether you told him look, just get a lawyer to sign a letter and that will protect us?

A No, I know I didn't do that, Mr. Dershowitz.

Q You indicated in your response to questions by Mr. Weinberg that you had a discussion with Mr. Winters in which you said in effect, look, we are not promising you anything, we are not giving you immunity.

Can you pinpoint when that discussion occurred in connection with the Natco matter?

A No, I can't pinpoint when that discussion occurred with regard to the Natco, but there has to be a record of it. The FBI was there at that meeting and I can't believe knowing the way the FBI operates there isn't some notation in somebody's file when that meeting took place.

Q Do you know where that notation and that file might currently reside?

A Probably his place at 69th Street.

Q Would you know in which case file that might be?

A No.

Q Do you recall , and I am not trying to be repetitive, if an agent other than the two you previously mentioned might have been at this particular meeting with Mr. Winter?

A No. The only other agent that I dealt with at tne FBI -- no, I guess there were a number of them.

No, my recollection is that Stapleton and Jules were the ones who dealt most frequently with the Hellerman problems.

Q And with the Winters problems?

A The Hellerman problems. Winters wasn't a problem. He showed up at this one meeting. Of course this meeting came up during the course of the Winters prosecution and his attorney, I think Robert Maguire, said himself there was no commitment ever made because my recollection is that Mr. Winters pleaded guilty.

THE COURT: Is that so? My understanding was that he was nolled.

MR. WEINBERG: I believe Mr. Winters pleaded guilty.

THE COURT: Perhaps I have it mistaken.

Q Mr. Morvillo, one final question:

In response to my questions about any possible deal with the family, you stated that you simply did not have any independent recollection.

In response to Mr. Weinberg's identical question, you answered "No, not to my recollection."

MR. WEINBERG: Mr. Dershowitz is summing up.

THE COURT: I suppose he is.

MR. DERSHOWITZ: I am asking him about an inconsistency.

THE COURT: He may be asked again what his recollection is.

You said, this is a very minor issue because experienced attorneys know that you don't ordinarily prosecute the close family members of a cooperating individual. That would be regarded as dirty pool and if they engaged in doing that, they would have trouble getting other criminals to cooperate and come in and testify against their associates. So these matters are treated with a certain amount of ethical considerations of that sort. Despite the fact the family isn't mentioned in the agreement, I am sure no attorney would expect that the mother of Hellerman would be indicted or prosecuted.

Don't you all agree on that?

MR. DERSHOWITZ: I didn't think Mr. Morvillo did.

THE COURT: It would be against ordinary custom and practice after signing that agreement to go and despite the fellow's mother; isn't that so?

THE WITNESS: Yes. The answer that I gave before still stands. I have no recollection of ever making that commitment to Mr. Hellerman.

THE COURT: If a practicing attorney signed such an agreement in 1972, would he expect or be concerned that his client's mother was going to be indicted immediately thereafter for something that occurred previously in which this cooperator was involved?

THE WITNESS: I don't think so. If he was concerned about it, he could have raised it in the course of negotiations and it would have gotten in the agreement or it wouldn't have. It was never raised.

Q In your experience, do you recall any agreements that you have participated in where there had been an explicit agreement not to prosecute family members?

A Yes.

Q Just one final question. I want to be clear what your final testimony is on this.

Is it your final testimony that you have no recollection whether there was an agreement relating to the family or you have no recollection that there was such an agreement?

A I have no recollection that there was such an agreement.

Q Do you have any recollection whether there was not such an agreement?

A No.

MR. DERSHOWITZ: That is all.

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RECROSS-EXAMINATION

BY MR. WEINBERG:

Q Mr. Morvillo, in what instances are you aware of agreements being reached in which family members are included --

THE COURT: I won't take that.

MR. WEINBERG: Mr. Dershowitz asked the question.

THE COURT: I don't care. I will not have injected into this hearing the names of other cooperating individuals and the terms of their respective agreements.

MR. WEINBERG: I am asking for Mr. Morvillo to characterize situations.

THE COURT: I will not take it. It is not relevant.

Just because he asked something, doesn't mean you have to go into it.

Anything else for this witness?

MR. DERSHOWITZ: No further questions.

THE COURT: Come again. Read the book.

THE WITNESS: Somebody should send me a complimentary copy.

[Witness excused.]

MR. DERSHOWITZ: I would like to call Mr. Kurland.

EDWARD KURLAND, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q Mr. Kurland, you are a member of the Bar?

A I am.

Q Do you recall a meeting you had with Mr. Robert Morvillo of the United States Attorney's office at any time?

A I recall having a meeting with him. I don't know exactly when it was.

Q Can you tell us where it took place?

A In his office here in the Federal Courthouse.

Q Can you tell us what the subject matter of the discussion was?

A There was no discussion. I went there. An appointment had been made for me for the purpose of picking up a check and I executed a receipt or some sort of a note acknowledging the receipt of the check and the purpose for which I was getting the check.

Q You say an appointment was made. Do you know by whom the appointment was made?

A I think it was made by another attorney, Morris Winters.

Q Do you remember anybody else being present at that meeting other than you and Mr. Morvillo?

A I don't think there was anybody. I don't remember. I don't think there was anybody present.

Q Just you and Mr. Morvillo?

A I think so. I could be wrong, but I don't remember.

Q I would like to ask you to look at Defendant's Exhibit F, this note signed by Mr. Schustek, and I would like you to look at the letter on your firm's stationery to which that note was attached.

A Yes.

Q Do you recall bringing that letter with you and showing it to Mr. Morvillo?

A Yes, I gave it to him.

Q You personally handed that note to Mr. Morvillo?

A Yes.

Q With the attachment?

A I believe so. My recollection is vague about the attachment.

THE COURT: Is it really in dispute? As I understand it, these papers came out of the U. S. Attorney's office.

MR. DERSHOWITZ: The letter is addressed to the U. S. Attorneys and we have Mr. Morvillo's attorney and here we are specifying the chain of transmission.

THE COURT: Very well.

Q At this point, did Mr. Morvillo ask you any questions about the corporation, about its situation?

A We had no discussion. He wanted to know who I was and I identified myself as a member of the Bar and he said you understand you are going to put this check as you indicated in a corporate account and I said I would.

Q Were you aware at the time of the financial state of this corporation?

A I knew nothing about the corporation or their financial state.

Q Did you know at this time whether they had an existing corporate account?

MR. WEINBERG: Objection. I don't see how that is relevant to the issues of this hearing, his state of knowledge.

THE COURT: I will let him tell what he knew.

A I didn't know whether they had one or not. I know in order to deposit that check, I had them open up a special corporate account in my bank and that was deposited there.

Q Who asked you to serve as the attorney in this transaction?

A Mr. Morris Winters.

Q Did Mr. Morris Winters tell you on whose behalf he was acting?

A No.

Q Did you ever meet a man named Steven Schustek?

A Yes. I think I met Mr. Schustek -- I think he came to my office when I obtained the check and I took him to the bank and he opened up, I think it was he opened up a corporate account to deposit that check.

Q Were you aware at the time that Steven Schustek was president of the corporation?

A If it was him. Whoever the gentleman was that said he was an officer of the corporation, and president, and then made out the forms at the bank to open the account.

THE COURT: Wasn't it deposited in your account as an attorney?

THE WITNESS: No, I had a separate corporate account opened up.

THE COURT: How was the check made out?

THE WITNESS: I don't recall. I don't know whether it was a personal or corporate check.

Q Had you ever previously represented this corporation?

A Never met any of the people before in my life. I had no dealings with them. I was only approached for this one function to pick up this check and see it got put in a corporate account. That was my only function.

Q Yesterday you described that to me in conversation --

THE COURT: Just ask questions.

Q Do you recall how you described your role to me yesterday?

THE COURT: No. Have him tell us what he discussed with you yesterday.

Are you still engaged in practice?

THE WITNESS: Yes.

1656

THE COURT: Where is your office located?

THE WITNESS: 415 Lexington Avenue.

Q Did you receive subsequently the bank account records for this account?

A I don't know that I did. I think the gentleman ofthe company who opened it up, I think he had possession of all of that.

Q Are you aware what happened to the funds that wer deposited in that account?

A I have no idea.

Q Did you receive a legal fee?

A Yes. I was paid, I think, the sum of $500, I believe, by the corporation, out of the account.

Q Out of this account?

A I believe so, yes.

Q Did you receive any additional amount of consideration directly or indirectly from Mr. Hellerman?

A No.

Q From Mr. Schustek for this transaction?

A No, sir.

Q Did you meet with or communicate with any other representatives of the goverment in conducting this transaction?

A No.

Q Were you asked any questions by Mr. Morvillo about your role in relation to this corporation -- withdrawn.

Did Mr. Morvillo ask you to your knowledge how long you had been representing this corporation?

A No.

Q Did Mr. Morvillo to your knowledge admonish you or warn you or caution you --

THE COURT: Don't use those characterizations. Ask him what the substance of the conversation was that he had with Mr. Morvillo on the day he presented his papers and got the check or any other day for that matter.

Q Can you tell us the substance of your conversation with Mr. Morvillo? Can you remember what Mr. Morvillo told you?

A As I said before, he said you understand that you as an attorney are going to take this check and see to it that it gets into the corporate account of this company, I don't remember the name of the company and I said I do and he said you will see to it that will happen and I said yes, I will, and that was the whole conversation.

He asked me to sign a receipt or whatever acknowledging the receipt of that check.

Q He never asked you to report back to him what happened to the funds?

A No.

Q He didn't ask you if you would be in control of the funds or the bank account?

A No.

Q Did he ever ask you about whether the funds were going to be given to Mr. Schustek?

A No, we had no other discussion other than what I just told you.

Q Can you say approximately how long the entire meeting occurred?

A Ten or fifteen minutes at the most. I don't think it took that long.

MR. DERSHOWITZ: No further questions.

*** CROSS-EXAMINATION

BY MR. WEINBERG:

Q Mr. Kurland, who initially approached you about accepting this money from Mr. Morvillo?

A Mr. Morris Winters, an attorney.

Q Did you have any conversation with anybody besides Mr. Winters about the money you would accept from the government?

A No.

Q What did Mr. Winters tell you was the purpose of your receiving this money?

A The government wanted some upstanding member of the community they could rely on to take this money, see to it it was going to be deposited in a corporate account of the company involved and that was all, that was their only interest and I do it for the fee I would get for the time I would spend to go to the office and open up an account.

Q You considered yourself an upstanding member of the community?

A I still do, thank you.

Q You weren't informed by anybody that this money was to be used by anybody other than the corporation; is that correct?

A I had no further discussion about the matter. I was not advised of anything and didn't want to be advised of anything. I had no interest in it.

THE COURT: You didn't regard this as a possible fraud?

THE WITNESS: Certainly not.

THE COURT: You didn't think that this corporation had a bank account of its own?

THE WITNESS: I didn't know. I knew I was opening one for the purposes of this check.

THE COURT: And you believe it had no account until that moment?

THE WITNESS: I didn't know.

THE COURT: You didn't think it was irregular for a corporation engaged in an ongoing business to go open a different special account in a bank selected by you solely for the purpose of handling that single check?

THE WITNESS: I was under the impression I was somehow helping the government in one of their transactions. I didn't go into the facts or matters behind it concerning the company involved.

THE COURT: You didn't know the corporation was already bankrupt?

THE WITNESS: Certainly not.

Q Did you ask anybody what was the corporation going to do with this money?

A No, it wasn't my affair, I didn't represent the corporation. I wasn't their attorney.

Q You were just receiving $500 to pick up this check from Mr. Morvillo?

A That was my sole capacity.

THE COURT: Who did you represent? You said you did not represent the corporation?

THE WITNESS: I wasn't their regular attorney, no.

THE COURT: Who did you represent? Who did you consider your client?

THE WITNESS: Mr. Schustek was the one that went with me and asked me to open the account. I guess in that respect I was representing him, to that extent.

Q Did Mr. Schustek tell you what purpose the money was going to be used for?

A No.

Q Did you ever ask Mr. Schustek?

A No.

Q Did you ever ask anybody what the money was to be used for?

A No.

THE COURT: Could I see that letter, please.

You told the U. S. Attorney by letter you were the attorney for Merchandise Plus, Inc?

THE WITNESS: If that is who Mr. Schustek was, that is what it was for.

THE COURT: Who did you consider your client to be?

THE WITNESS: The gentleman who approached me to accept this check.

THE COURT: Are you engaged in practice with the same Mr. Weinberg who is appearing of record in this litigation?

MR. SILVERGLATE: Richard Weinberg is Mr. Ostrer's attorney.

THE COURT: All right.

Q Mr. Kurland, who asked you to accept this check from the United States Attorney's office?

A What do you mean by that?

Q You testified that Mr. Winters asked you to accept this check.

A He asked me to go to Mr. Morvillo's office and to accept this check. He told me what my purpose was and what I was going to accomplish.

Q What was your purpose?

A Just to be an emissary, more or less, to go to the office for the uprpose of seeing to it that this check was deposited in a corporate account and that was all.

Q Did he tell you that the government had some concern that this money only be used for the corporation?

A No. He wanted to make sure it was going to go into a corporate account. After that it wasn't my concern.

Q Did you ask him who the regular attorney was for this corporation?

A No, I didn't go into that.

THE COURT: Just a moment, Mr. Kurland, you are an attorney. How long have you been practicing?

THE WITNESS: 35 years.

THE COURT: Let me call your attention to the last paragraph of Exhibit F where you write over your signature "Upon receipt of these funds, I shall be responsible for their disposition."

THE WITNESS: By disposition, I meant I will put it in a corporate account. I wasn't going to be responsible for a corporation that I knew nothing about or had nothing to do with. That was not my understanding.

THE COURT: Who wrote this letter, Exhibit F for identification?

THE WITNESS: I don't know the answer to that.

THE COURT: Who is RK?

THE WITNESS: That was a secretary of mine then, I believe. This was my letter. RK is my secretary.

THE COURT: You dictated it?

THE WITNESS: I believe I did.

THE COURT: Do you have any doubt about it?

THE WITNESS: No.

Q Mr. Kurland, did you ask anyone as to who the regular attorney was for this corporation?

A No, I didn't ask anyone.

Q Did you ask anyone why it was necessary for them to hire an attorney to pick up this money from the United States Attorney's office?

A I was told that the United States Attorney wanted an attorney to pick it up and be present, somebody they would consider responsible to see to it that it went into that corporate account.

Q And all you did was to see that it went into the corporate account?

A That is right.

Q Did you personally deposit it into the corporate account?

A I personally saw it was deposited in the corporate account in my own bank.

Q Did you ask Mr. Winter what the money was going to be used for?

A No.

Q Did you ask anybody what the money was to be used for?

A No, I had no idea.

Q You had no idea what the money was to be used for?

A No.

Q Prior to this occasion, did you ever go to the U. S. Attorney's office to receive a check made out by a corporation?

A I never had been there in my life.

THE COURT: Were you introduced to somebody in the bank?

THE WITNESS: I went with Mr. Schustek and he went with me and had his papers and I introduced him to the bank officer.

Q Did you have any discussion with Mr. Schustek about what the money was to be used for?

A No.

Q Did you ask him why the U. S. Attorney's office had this money?

A Why they had it?

Q Did you ask Mr. Schustek why the U. S. ATtorney's office had custody of $80,000 of this corporation's money?

A No, I had no idea.

Q Did you ask Mr. Winters why the U. S. Attorney's office had custody of $80,000 of this corporation's money?

A No, I did not.

Q Did you ask anyone why the U. S. Attorney's office had custody of this money from that corporation?

A No.

Q Do you recall that Mr. Morvillo said to you that you as an attorney will make sure that the check gets into a corporate account?

A Right.

Q You made sure the check got into a corporate account?

A I did.

Q Did you ever ask anyone including Mr. Schustek or Mr. Winters what happened to those funds?

A No.

Q Did you receive monthly statements from the bank in connection with that account?

A No, it would go to the corporation. I don't know what happened after that.

Q You as the attorney in connection with that account never received any monthly statements in connection with that account?

A No, I did not.

Q Did you ever ask anybody about the monthly statements to the account?

A No.

Q Your understanding was you were to receive the $500 just to pick up the check and put it into a corporate account?

A Just for my transaction. I had nothing to do with that company.

Q At the time were you a partner of Morris Winters?

A No.

Q What was your relationship with Mr. Winters at that time?

A Just friends.

Q Did you share office space with him?

A Never, no.

Q At that time had Mr. Winter discussed with you his activities in connection with a stock called Belmont Franchising?

A No.

Q You don't recall any such discussion with Mr. Winter?

A No.

Q Do you recall any discussion at all with Mr. Schustek as to what the Natco Corporation's business was?

A No.

Q Did you have any such discussion with Mr.

Winters?

A No.

Q Did you have any discussion with Mr. Winters or Mr. Schustek about the financial condition of the corporation?

A No.

Q Did you ever have any discussion with Mr. Schustek or Mr. Winter or anybody else about the corporation itself?

A No.

Q None whatsoever?

A No.

MR. WEINBERG: No other questions.

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REDIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q When Mr. Winters told you in effect to go to the U. S. Attorney's office to pick up the checks, had he told you there had been prior communications between him, Mr. Winters and the United States Attorney's office?

A He might have said they had discussions. I don't know what they are. I know as a result of whatever discussions he might have had, he said they had this problem, that they had this check and they wanted to turn it over to somebody to see to it it got into a corporate account and would I undertake to do that and nothing further. I said pure and simply, if that is all I had to do, I would be glad to do it if I am helping the government or anybody, it is all right. I had no qualms about picking up a check and giving a receipt and seeing to it it went into a corporation account. That was all I was going to do.

MR. DERSHOWITZ: No further questions.

THE COURT: Anything else?

MR. WEINBERG: Nothing else, your Honor.

THE COURT: The witness is excused.

[Witness excused.]

THE COURT: Before we recess for the noon period, could I have an estimate, you can give it to me uniformly, of what else you have today?

MR. WEINBERG: Your Honor, if I could just raise a point. I discussed previously with Mr. Silverglate and Mr. Dershowitz that Mr. Wing has plans to be out of town tomorrow and if it would be at all possible for Mr. Wing to be called as a witness this afternoon he would certainly appreciate it.

I also believe Mr. Edwards is in New YOrk from Boston and if it is possible to call him as a witness this afternoon --

33rksr

THE COURT: I am going to ask you all not just to call witnesses at random but give the Court some kind of a suggestion what the witness is offered to show and if possible, to stipulate, because some of these things aren't very much in issue. I really don't know what we learned from that last witness that we didn't already know that is relevant.

MR. DERSHOWITZ: I think we learned A, although Morvillo's recollection was not precise, there was a direct meeting not between a lot of people but between Mr. Morvillo and we learned that Mr. Morvillo did not make inquiries about independence and if anybody had that decision to make it, it was he because nobody else in the office had opportunity to make those inquiries.

THE COURT: We already got from Hellerman who he was and how he got into the case.

In any event, I don't want to get cumulative materials that are not in dispute or really don't affect it and I have to tell you again, the U. S. Attorney's office is the U. S. Attorney's office and it doesn't really matter, it is the underlying fact that counts, not precisely who was present or who did it.

All right, what do you have this afternoon? Will you take Mr. Wing out of turn?

34 rksr

MR. SILVERGLATE: Yes.

THE COURT: Then what do you have?

MR. SILVERGLATE: And we will take Mr. Edwards.

THE COURT: Won't you confer informally with Mr. Weinberg and see if the testimony of these two witnesses, to the extent that it is not in dispute, can't be stipulated to?

MR. DERSHOWITZ: Yes, we will do that.

Your Honor, I would have one scheduling problem which I don't think will interfere with the Court. I have learned that I am expected to argue a motion before Judge -- another judge in this court at 2:30 which I think will be a very brief motion.

THE COURT: I will let Mr. Silverglate go ahead without you, but do try to have a three-way conversation and I will resume at 2:15.

[Luncheon recess.]

[Continued on next page.]

AFTERNOON SESSION

[2:15 p.m.]

THE COURT: Would you be able to work out an offer of proof and save time for me with respect to this testimony we are getting this afternoon as I asked you to do before you broke for lunch?

MR. SILVERGLATE: We have discussed it. I can inform the Court what it is I will ask of each witness and I have already let the government know this information.

THE COURT: Maybe it would be agreed to, you see, that's the point I am trying to make with you.

I don't have to take testimony on facts that aren't in issue.

MR. SILVERGLATE: We have tried. We have not been able to agree on certain points that perhaps are subtle.

THE COURT: State what you can agree on on the record and the rest I will take the proof.

MR. SILVERGLATE: I am going to call John Wing, your Honor.

THE COURT: Just state what was stipulated to with respect to Mr. Wing.

MR. SILVERGLATE: Well, Mr. Wing was involved in this investigation, Hellerman; is that Mr. Wing prepared

1673

2 gtsr

the 3500 file --

MR. WEINBERG: Your HOnor, we didn't stipulate to that at all.

THE COURT: Is there anything that you are in agreement on?

MR. WEINBERG: I don't believe we have stipulated to anything in connection with Mr. Wing's testimony.

THE COURT: Is there anything you can stipulate to?

You see, I have already consumed a day and a half in what should be a simple hearing here and I don't want to have people proving facts that aren't really disputed. I want to narrow in on what is the issue at this hearing.

That is what I asked you people to do when I left for the recess.

MR. WEINBERG: I understand. And Mr. Silverglate and I discussed it and it did not appear that we were able to stipulate to Mr. Wing's testimony.

THE COURT: I will take Mr. Wing's testimony.

MR. SILVERGLATE: I thought we agreed on everything except --

MR. WEINBERG: No, I don't think that is accurate.

THE COURT: All right. Please take the stand.

JOHN R. WING, called as a witness by the defendant, being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. SILVERGLATE:

Q Would you identify yourself, please, and your position?

A My name is John R. Wing and I am an Assistant United States Attorney in the U. S. Attorney's office for the Southern District of New York.

Q And you were involved, were you not, in a service of prosecutions in which Michael Hellerman was either an informant and/or a witness?

A I was involved in trying one case concerning which we received information from Hellerman, and I was the chief of the Fraud Unit during the time that a number of other cases prosecuted by other Assistants in that unit using Mr. Hellerman as a witness took place.

THE COURT: Which case did you first try?

THE WITNESS: It was called the Imperial Investment Company case.

Q Were you in charge -- were you involved in the debriefing of Michael Hellerman?

A I was involved in debriefing him on some matters

1675

Q All right. Did those matters include anything relating to the Belmont Franchising case?

A There -- not directly, but there was one occasion when I debriefed Hellerman about many matters in which, as best I recall, there were two references which were references in some way to the Belmont case.

Q Were you in charge of preparing the so-called 3500 file in the Belmont case?

A Absolutely not.

Q Do you know if any documents you prepared were given to defense counsel in the Belmont case?

A I believe that there was a memo I prepared for Mr. Maguire, who did try that case, listing a number of matters involving Mr. Hellerman, and I think that was turned over to defense counsel.

Q What were the subjects that you discussed with Mr. Hellerman, do you recall?

A We would be here all afternoon if I went through all of them.

Perhaps I can make it easier if I explained I talked at length about the Imperial case and then on another occasion I debriefed him for a period of four or five days and we touched on just many, many matters, and the purpose of that session was to cover with Hellerman anything

1676

he possibly could tell us about cases or individuals other than the three major cases that we already knew about, one of which was Belmont.

THE COURT: Imperial being the other and what is the other?

THE WITNESS: Imperial and At Your Service Leasing were the three major cases.

Q Did you discuss at any time, do you recall discussing with Mr. Hellerman the so-called Natco and Merchandise Plus bankruptcy fraud swindle?

A I don't believe I did, no.

Q Have you before today heard of the Natco Merchandise Plus bankruptcy fraud swindle?

A Yes.

Q When was the first time you heard of it?

A Well, I don't recall it precisely.

It was probably -- if you could tell me when the indictment was filed, I could be able to help you perhaps.

THE COURT: You are talking now about the Natco indictment?

THE WITNESS: Yes.

Q That would be in, I believe, May of 1971.

Yes, May 5, 1971.

A I became the chief of the Fraud Unit in the office in June or July 1971.

I would not have heard about the case prior to that time. I probably heard abo[illegible] sometime thereafter.

Q Did you pre -- I am [illegible] you a memorandum to the Honorable Morris E. Lasker from Robert G. Morvillo, dated --

THE COURT: The exhibit number.

MR. SILVERGLATE: Has this been put into evidence yet?

THE CLERK: Yes, that is in evidence.

MR. SILVERGLATE: Let me see if it is in my exhibit file.

[Pause.]

MR. SILVERGLATE: Oh, yes, here it is. Okay. Exhibit D for identification.

THE COURT: Show it to the witness.

Q Tell me if you recognize it, sir [handing.]

A I am sure I've seen it before.

Q Are those your initials on the top of Page 2?

A Oh, yes.

Q And following?

A Right. I probably prepared it.

Q Does it jog your memory or are you saying that only because you see your initials, sir?

A I am sure -- I am sure if my initials are on it that I must have prepared it.

I mean, I recognize it. I remember it generally. I don't have any specific --

THE COURT: You see, you haven't exhausted his recollection about anything as far as I can see.

The authenticity of this paper is not in dispute. Mr. Morvillo this morning identified himself as the signatoree and testified that Mr. Wing prepared it and that that was corroborated by Mr. Wing's initials.

So please don't waste time going over something that Mr. Dershowitz already brought out this morning. Let's get right to whatever this witness knows that is in dispute.

MR. SILVERGLATE: Right.

Your Honor, it is on Page 6 that I am -- he has already denied knowing the information on Page 6.

Q Mr. Wing, do you recall making a statement at any time that Micahel Hellerman saved Natco Company $100,000 corporate funds, prevented those funds from being dissipated or wrongfully appropriated?

A No, no.

Q Look at Page 6 of the memo.

1679

A Yes.

Q Paragraph -- the second paragraph. Please read that and see if that refreshes your memory.

A Are you talking about the last sentence?

Q Especially the last sentence, yes, sir.

A It really doesn't refresh me, but -- I can't be positive, but probably the way this memo was prepared was I got information from each Assistant who handle each different case and they wuold give me a little memo and I would compile it all maybe making a few editing changes into this big memo.

I suspect that's how it was done. I'm not positive, but I think that's -- that's probably the case, because I was not familiar with the details of many of these cases.

Q Then is it more likely you would have received it from an Assistant rather than Hellerman, that information?

MR. WEINBERG: Objection, your Honor.

A I am positive --

THE COURT: If he knows he can answer. I am sure this memo was not prepared directly from Hellerman. I am sure I worked with the individual Assistants, each of whom had different cases.

Q From whom -- who handled -- well, do you know from whom you got information relating to the Natco matter?

A Well, David Brodsky tried the case. I would assume he would be the Assistant who was providing me with the information.

MR. SILVERGLATE: Your Honor, I see this is an exhibit for identification.

I would like to have it admitted as an exhibit in the case at this point.

THE COURT: Show it to Mr. Weinberg.

[Pause.]

THE COURT: Is the date of that prior to January 26, 1973?

MR. WEINBERG: Yes, it is, your Honor.

If Mr. Silverglate represents that he obtained this document from court records, that it was, in fact, filed with the Court, I would have no objection.

MR. SILVERGLATE: I will represent that I got this from the attorney for the bankruptcy trustee -- I believe that was part -- yes, the attorney for the bankruptcy trustee of Natco and Merchandise Plus who told me he got it from the U. S. Attorney's office.

I also have copies of the transmittal documents from the U. S. Attorney's office to that lawyer.

THE COURT: All right.

MR. WEINBERG: Your Honor, it seems it is only relevant if it were filed with the Court, this document.

If it just stayed in the U. S. Attorney's office, I don't believe this would be relevant to this proceeding.

[Continued on next page.]

THE COURT: Show it to the clerk, please. Hand it to the clerk.

(Pause.)

THE COURT: In view of Mr. Morvillo's testimony this morning, looking at the document itself and the date it bears, based on counsel's representation he obtained it from the bankruptcy trustee, I will infer that it was, in fact, sent to Judge Lasker on November 2nd, was, in fact, signed by Mr. Morvillo at some time prior to November 2nd, 1972, and that this witness here had some part in the dictation of it.

Is there any dispute on your part about making those inferences?

MR. WEINBERG: Your Honor, I am just not certain at all --

THE COURT: J.R.W.

MR. WEINBERG: That is not what I am disputing. I am questioning whether or not it was filed with the Court.

It may well have been. Your Honor, I just don't know.

THE COURT: Your objection is overruled. It will be received in evidence.

If it hasn't been filed with the Court, you may bring that fact out for whatever relevance it has when you get a chance.

xxx (Defendant's Exhibit D received in evidence.)

THE COURT: That might affect the weight to be given to it, but that's all.

Please let's move along.

MR. SILVERGLATE: Yes, your Honor.

Q I show you, Mr. Wing, a two-page memorandum from you to Mr. McGuire, dated January 8, 1973, "Subject: Hellerman."

MR. SILVERGLATE: Can we have this marked for identification, sir.

THE COURT: Do I understand that this is 3500 material in this tria , in the Belmont trial?

MR. SILVERGLATE: I believe it is.

From the transcript I gather it was, your Honor.

xxx (Defendant's Exhibit H marked for identification.)

THE COURT: So we can be clear about it, I am considering as part of the record before me all of the 3500 material in the Belmont trial which was delivered to Mr. Edelbaum prior to the cross examination of Hellerman on the trial of Mr. Ostrer before Chief Judge Edelstein. That is part of my record at this hearing and you don't need to bring anything in that is already in there.

I have directed each of you to confer together and make up such a file or reconstruct such a file so the Court can have ready reference to what is part of that record.

MR. SILVERGLATE: I was just afraid that there was a chance that might not have been turned over.

THE COURT: All right, on the chance that it may not be, you may proceed with it as a separate exhibit.

Q Do you recognize that memo, sir (handing)?

A I do.

Q Did you prepare that one?

A I believe so.

Q And did you prepare it from interviews with Mr. Hellerman?

A I prepared it from notes of interviews with Mr. Hellerman.

Q When you interviewed Hellerman, you took notes, is that correct?

A Yes.

Q Does Exhibit H which I have just showed you contain all of the information that you got from Hellerman that you felt constituted 3500 material --

THE COURT: Brady material, I think it is.

A I didn't think it constituted 3500 material at all. It was turned over or it was reduced to that form and then turned over with respect to possible Brady implications.

Q Brady material.

So this memo, Exhibit H, contains all of what you learned that you considered Brady material with respect to Mr. Hellerman?

A In connection with those particular interviews, yes.

Q Fine.

MR. SILVERGLATE: May we, your Honor, move for this to be Exhibit H.

THE COURT: No objection. Exhibit H is in.

MR. WEINBERG: No objection. It was turned over to Mr. Edelbaum at trial as Brady material, your Honor.

xxx (Defendant's Exhibit H received in evidence.)

Q Mr. Wing, are you aware whether or not Mr. Morvillo took any notes of interviews with Hellerman?

A I'm not.

Q Have you ever discussed that with him?

THE COURT: Prior to January 26, 1973?

MR. SILVERGLATE: Yes.

A I -- I just don't recall.

I'm trying to think of the Imperial case.

I don't think that he had anything on paper, but I honestly don't recall.

He may have -- he may have had -- he may have taken some notes or some information indicating what Hellerman -- like a subject matter Hellerman had told him or not told him, but I'm not sure if that existed that I ever saw it, and I'm pretty sure there weren't notes on Imperial.

I know he took notes, for instance, of some of the other people involved and I don't remember any notes on Hellerman.

Q How many times -- can you estimate how many times prior to January 26, 1973 you met with Hellerman and Mr. Morvillo?

A The two of them together?

Q Yes.

A Hardly at all.

I mean, I'm not sure offhand. I don't remember any.

Maybe the first time I met Hellerman Morvillo might have been there, but I -- unless you can be more specific, I don't have any specific recollection.

I do remember meeting Hellerman a number of times and they were usually with one or both of his lawyers.

Q Did you have occasion to observe Mr. Morvillo ever take copious -- strike "copious" -- did you have occasion to observe Mr. Morvillo taking notes at any interview of Hellerman at which you were present?

A No.

Q What did you do with the notes that you took of your interviews with Hellerman?

A I at some point turned them over to Mr. McGuire.

Q All of them?

A Yes.

Q You turned them over in addition to turning over the extracts that you put into Exhibit H?

A Oh, yes.

Q So I see.

Was the purpose of extracing some of this material on Exhibit H simply to isolate the Brady material for Mr. McGuire?

A Yes. It was really to put it in a form to give it to defense counsel.

Q The material you gave to Mr. McGuire, did that involve only the Belmont case or did that involve a lot of cases?

A The material I gave to Mr. McGuire?

Q The notes, excuse me, the notes that you gave him.

A I don't think it involved the Belmont case at all, with a couple of very indirect exceptions.

It involved many, many other matters.

MR. SILVERGLATE: May I have one moment, your Honor?

(Pause.)

Q Can you estimate how many pages of notes you turned over to Mr. McGuire?

A 15, 20.

MR. SILVERGLATE: Your Honor, Mr. Ostrer would move for the production of those notes for review by his counsel.

Subject to review of those notes, I have no further questions at this point.

MR. WEINBERG: Your Honor, the Government would vigorously oppose production of those notes to defense counsel.

Those notes contain information that Mr. Wing obtained from Mr. Hellerman about various cases, some of which were investigated --

THE COURT: To the extent any of them are Brady material and have not been produced already at the trial, I will direct you to produce them.

MR. WEINBERG: Your Honor, I will produce to Mr.

Ostrer any reference in those notes to Belmont or to Mr. Ostra and I would be happy to turn over to the Court for an in camera submission the entire notes.

THE COURT: I don't need the entire notes.

We are only having this hearing, and I kept repeating this this morning and nobody seems to take heed, the only issue that I am trying, that I understand, is whether by reason of the revelations in Hellerman's book the Government, at the Belmont trial with respect to Hellerman, complied with its obligations under the Brady rule and under Section 3500 of Title 18.

That's the only issue we are trying here. I don't have to get into a lot of extraneous notes about other criminals or other matters, unless they are Brady material, by which I mean that they bear on the credibility of Hellerman at the trial and were, therefore, properly producable in the same sense that Exhibit H was produced.

If they have to do with Natco, then you ought to produce them, or Merchandise Plus.

So I will direct you to produce any of those notes which constitute Brady material, and if you have any doubt about what they are, I will inspect those that you have doubt about in camera if necessary.

MR. WEINBERG: Your Honor, Mr. Wing has testified that this memo which is Exhibit H, I believe, to Mr. McGuire contained the Brady information.

THE COURT: That is a two-page memo.

You see, there is nothing in there about Natco at all, as I read it, or Merchandise Plus.

A fictitous paint company is not Natco, that is something else, isn't it?

MR. WEINBERG: I don't know, your Honor.

THE CLERK: It is.

MR. SILVERGLATE: Your Honor, if I may direct the Court's attention to what I am getting at --

THE COURT: I have made my direction in response to your request. I don't think you have to do anything further.

I expect Mr. Weinberg to comply with it at his earliest opportunity. But I am no. going to direct that all the notes be produced. It isn't necessary.

All right.

MR. WEINBERG: Your Honor, I will turn over to Mr. Ostrar's attorneys any references in those notes to Mr. Ostrar or to the Belmont trial.

THE COURT: Or the prior criminality of Hellerman.

MR. WEINBERG: It is the Government's position that Defendant's Exhibit H at this hearing is the Brady material from those notes.

THE COURT: All right.

If there is anything else in thoese notes that is not in Exhibit H, that should be turned over if it relates to Hellerman's prior criminality.

(Continued on next page.)

MR. SILVERGLATE: Your Honor, if I might ask for a small amendment. Or if it relates to Natco.

THE COURT: All right, Natco. There is no question Hellerman was even engaged in criminal conduct involvin Natco. That was testified to ready this morning.

MR. SILVERGLATE: No further questions of this witness.

THE COURT: Any cross examination of Mr. Wing?

MR. WEINBERG: Your Honor, I would like to bring something to the Court's attention and I believe I should do it out of the presence of the witness.

THE COURT: Would you step out into the hall, Mr. Wing.

(Witness leaves the courtroom.)

MR. WEINBERG: Your Honor, in the papers that were submitted prior to this hearing, there are a number of allegations in those papers concerning representations Mr. Wing may have made to Mr. Hellerman about safe house and prison and things of that sort. It appears from this hearing that that claim has been dropped. There has been no testimony elicited from Mr. Wing on that subject and I will not go into it.

THE COURT: Was any such information elicited from Hellerman in his testimony?

MR. WEINBERG: I don't believe so. The only thing I recall, your Honor, is some testimony from Mr. Hellerman in response to a question of Mr. Silverglate as to whether or not after he began serving his term of imprisonment, he served it in a safe house.

THE COURT: It is not doubted that he did and I think we understood that a person in a safe house is confined.

MR. WEINBERG: I understand, your Honor. I don't want to in a post hearing paper, the claim to be raised again that the Government makes certain representations to Mr. Hellerman prior to the Ostrer trial as to where he will spend his period of incarceration.

THE COURT: That is right in the agreement.

MR. WEINBERG: The Government believes it is clearly in the agreement.

THE COURT: I don't like to be giving anyone lectures, particularly in a case in which I have a full professor acting as counsel, but you know, if you imagine an adversary proceeding, the scales of justice begins evenly bound and he throws a pennyweight into the scale and it goes your way and you can throw another pennyweight and it goes the other way. Until the case is over, it can't be said to be in Balance, so that is what you really have. If Mr.

Hellerman testifies to something and it isn't contradicted, there is no need to bring cumulative material.

The real issue is not whether they put him in a safe house. The question is whether their intention to put him in a safe house, if it existed, was adequately disclosed in the written agreement or otherwise before Mr. Edelbaum began to cross examine Hellerman and I think that is in paragraph 5 of the agreement. I don't know why you have to make a big argument out of it.

MR. WEINBERG: My only reason for raising the subject was that Mr. Silverglate I believe in his affidavit spends many pages discussing representations the Government allegedly made to Mr. Hellerman about whether he be in a safe house or not during his period of incarceration.

THE COURT: They did make such representations.

MR. WEINBERG: Only to the extent it is in that agreement.

THE COURT: Do you dispute that?

MR. SILVERGLATE: Yes. Hellerman testified that such promises were made to him.

THE COURT: If Hellerman testified, that is part of my trial record and if you don't think Hellerman testified truthfully, you may examine Mr. Wing.

MR. WEINBERG: I don't believe Mr. Hellerman testified on that subject and Mr. Silverglate has not questioned Mr. Wing on that subject at all.

THE COURT: I am not going to review the record at this time. Each of you have different recollections of it.

I had assumed all along it was made pretty clear to Mr. Hellerman he would be confined in a safe place and that that fact was embodied in a written agreement.

MR. WEINBERG: That is correct.

THE COURT: I didn't think the book was false in that regard at all.

MR. WEINBERG: The book can be interpreted to read that Mr. Hellerman believed he was guaranteed that he would spend his period of incarceration in a safe house.

THE COURT: And you say that in fact he was guaranteed that the U. S. Attorney would use his best efforts to have the Government take such precautions as are necessary to secure his physical safety?

MR. WEINBERG: That is right.

THE COURT: That is a distinction without a difference.

What do you say about this? The U. S. Attorney agrees with a cooperating criminal they will take such precautions as are necessary to secure his physical safety.

isn't that a guarantee they will put him in a safe house so Johnny DioGuardi can't get to him? Let's be realistic.

MR. SILVERGLATE: The question is whether the jury would so understand it.

THE COURT: That is not the question. The question is whether Mr. Edelbaum was adequately informed in order to question Hellerman and he could have and probably did, although I don't recall at this moment, ask Hellerman in substance, Mr. Hellerman, you expect to be in a safe house don't you. He could have asked that. It might be improvident to do so but he could have done so.

What is wrong with paragraph 5 of the written agreement?

MR. SILVERGLATE: It is too general.

THE COURT: I don't think so, but I can't decide that this afternoon. Each of you must stand on the record. I am not going to advise either of you what you should or should not inquire of Mr. Wing about.

MR. SILVERGLATE: I want to visit my brother. I am not dropping my claim. I just didn't ask Mr. Wing about it.

THE COURT: That is perfectly appropriate, on your part.

MR. WEINBERG: My understanding is that Mr.

Silverglate's affidavit and Mr. Hellerman's book is not evidence before the Court. That is the purpose of having the hearing.

THE COURT: The book is evidence to an extent because although it hasn't been formally offered as an exhibit, this man has been asked about his book. He has been cross examined about his book. He has testified how this fellow Renner garbled up his tapes and he said part of his book isn't accurate and he didn't read part of the book. I don't have to summarize the record for you. I am treating the book as part of the evidence here as amplified and explained by so much of Hellerman's testimony before me as I ultimately conclude that I believe.

MR. WEINBERG: Your Honor, the Government would press the point that Mr. Hellerman's book is not evidence before this Court.

THE COURT: Offer it as an exhibit.

MR. SILVERGLATE: I offer it as an exhibit.

I offer it.

THE COURT: Received in evidence. Objection overruled.

MR. WEINBERG: May I be heard?

THE COURT: You are wasting time.

MR. WEINBERG: I don't believe so.

THE COURT: The man was cross examined about his book.

MR. WEINBERG: It was not under oath. The only way a prior inconsistent statement could be properly be used as substantive evidence is if the man is under oath when he gave it --

THE COURT: Not so. I am taking it, you have an exception. Don't waste my time. Get the witness in here and examine him about anything you please. I am not allowing Mr. Silverglate to turn this hearing in the tales of Sheharizad and I will not permit you to do so, either. I have ruled.

Mark the exhibit.

Get Mr. Wing back in here and finish his testimony.

xxx (Defendant's Exhibit I, received in evidence.)

THE COURT: Bring in the witness.

(Witness enters the room.)

xx CROSS EXAMINATION

BY MR. WEINBERG:

Q Mr. Wing, prior to January, 1973 when Mr. Hellerman testified in United States v. Ostrer, did you make any promises or representations to Mr. Hellerman that he would serve his period of incarceration in a safe house?

A No.

Q Did you have any discussions with Mr. Hellerman on that point?

A Yes. Either with him or his laywers.

Q Please relate to the Court the conversations that you had with either Mr. Hellerman or his attorney.

THE COURT: Prior to January 26, 1973, if you would.

A In substance they sought to have us attempt to get Hellerman placed in a safe house to serve any sentence he might receive and I am sure that he had requested that on more than one occasion. How many, I don't recall, and essentially we told them we would look into it and see what could be done, and it is my memory that we tried, and I think it was me and I don't remember who I talked to and I think I tried before he got sentenced, and learned from somebody, either in the Department of Justice or the Marshal Service, somewhere I got the fact that they couldn't keep a man in a safe house if he was serving a sentence as opposed to waiting trial. I believe I related that to Hellerman or his lawyers or both and that was that.

MR. WEINBERG: I have no other questions.

THE COURT: You may examine on redirect.

xxx

REDIRECT EXAMINATION

BY MR. SILVERGLATE:

Q Are you saying while a man is serving his sentence, he cannot be in a safe house?

A That is what I was told. I received that infor mation from some source as the reason why Hellerman couldn't do this and I just don't know who it was that led me to believe that. Actually I later learned that people were serving sentences in safe houses and when we later requested or renewed the request that that be done, we mentioned that to the Department of Justice.

Q Did you before January 26, 1973, tell Hellerman or his lawyers you would see what you could do to try to get him into a safe house?

A Other than what I have testified to, I don't think so, but when you say January 26, I don't remember --

THE COURT: That is the close of the Belmont trial, the date we are trying to focus on in this hearing to the extent it is possible to do so.

At or prior to the close of the Belmont trial.

THE WITNESS: I can't pin it one way or the other. I know I wrote a letter on February 6.

THE COURT: That would be after January 26.

THE WITNESS: It would, but whether I had a conversation about it before or after, I just don't know.

Q Do you know when he first did go to a safe house?

A I think it was sometime -- I guess I really don't know. In one of those letters is a reference to the fact that he was in a safe house, at least in March, and whether they had him in safe houses or what they were doing with him, in the beginning, when he was in the fourth Belmont trial, I don't know where he was staying.

Q Prior to his testimony in Belmont, did you have communications with the Department of Justice on the subject of a safe house for Michael Hellerman?

A I think I did.

Q Did you convey back to Michael Hellerman or his lawyers the contents of your discussions with the Justice Department?

A I think I told them that it couldn't be done because of the fact they didn't keep people who were serving sentences in safe houses.

Q Did you in that connection ever see what you could do with respect to getting him into a safe house?

A You mean after I related it back?

Q Yes.

A Well, some time thereafter I did, because I gave him that reason and some time later, either he or his lawyers came back to me and said you know, there are people serving sentences in safe houses and I don't know whether they gave me the names of specific people or not, but reading my letter to Peterson of February 6, I see I make a specific reference to that and that is what happened and we then decided to go back and try again.

MR. SILVERGLATE: No further questions.

MR. WEINBERG: Nothing else.

THE COURT: Thank you, Mr. Wing, you are excused.

(Witness excused.)

MR. SILVERGLATE: Thomas Edwards.

THE COURT: Have you gentlemen talked with Edwards? Is it possible to shorten this hearing by stipulating facts not really in dispute?

MR. WEINBERG: Can we have a few minutes to consult?

THE COURT: Please consult.

(Pause.)

MR. SILVERGLATE: Your Honor, there are two areas in which I wish briefly to inqurie of Mr. Edwards. The Government knows those areas. We cannot stipulate on them but they will be very brief.

384

xxx THOMAS EDWARDS, called as a witness by the Petitioner, having been first duly sworn by the Clerk of the Court, testified as follows:

xx DIRECT EXAMINATION

BY MR. SILVERGLATE:

Q Mr. Edwards, it is true, is it not, you were at least co-counsel for Michael Hellerman during the course of his being prosecuted in this court?

A Yes, until June of 1973.

Q You had various discussions with Robert Morvillo during the time Robert Morvillo was Chief of the Criminal Division here?

A Many, many.

Q Did you discuss with Mr. Morvillo the whole issue of whether your client would be prosecuted and for what and what plea bargaining might be arrived at?

A Many, many times.

Q In fact you signed, did you not, the written agreement between Hellerman and the Government?

A Yes.

Q Mr. Edwards, first of all, were you aware of any promises made to Mr. Hellerman or to his attorneys that were not specifically set out in that agreement?

A No. The attempt that was made by Morvillo and myself was to put everything in there that was part of the bargaining between Hellerman and the Government.

Q Did the issue prior to the execution of this agreement, did the issue of Hellerman's involvement in the Natco Merchandise Plus bankruptcy fraud come up in discussions between Hellerman's counsel and Morvillo?

A Am I correct that there is no reference at all to that in the agreement?

Q Yes, sir.

A I must tell you frankly, that is a surprise to me. Hellerman's participation in that was very well known, indeed, as I remember it. The trial had occurred around nine months prior to the signing of the agreement.

THE COURT: That is the trial of the Natco indictment?

THE WITNESS: Yes, your Honor. My memory is it was around March or so and the agreement probably wasn't until September, perhaps, or maybe even October. I don't remember, and it was our intention in listing cases to put in there every case we could think of that Hellerman had participated in and that was known to the Government as of the time of the agreement we were signing and as of now, I have no explanation for why that would not have been in there because Hellerman's participation in that was well-known to everyone and it was obvious that he was not going to be a defendant in that case. As is, the trial had already occurred and the only thing I can think of, and I don't mean to be facetious, which is this; there were so many cases in which Hellerman had participated, that although we were trying to be careful, we may have merely forgotten.

THE COURT: Is the same true with respect to th Tabby's stock fraud and I notice the alleged bribery of union officials isn't in there, either.

MR. WEINBERG: Your Honor, the January 8, 1973 memorandum was prepared by Mr. Wing after Mr. Hellerman signed the agreement. He went out and debriefed Mr. Hellerman after the agreement was signed between Mr. Hellerman and the Government.

THE COURT: I know that, but unless the Weintraub-Landau case is the same thing as Tabby --

THE WITNESS: No, it isn't the same thing. I remember the Weintraub-Landau matter very well.

THE COURT: But there were a couple of things left out of the agreement, is that so?

THE WITNESS: May I see a copy of the agreement? I have not seen a copy of it for years. I want to correct what I just said. I ran over a copy of this, I now realize, several weeks ago, however, not on this point.

Your Honor, I need my glasses.

THE COURT: Go get them.

Is there an open question?

THE WITNESS: Your Honor had inquired of me if I had a recollection concerning the Tabby case.

The union bribery case, I have no present memory of at all. I do not know what the case was as of now and I have no memory whether we were aware of such a case at that time or not when this agreement was signed.

The Tabby case, I surely remember it being mentioned.

However, I am really a little hazy on this. I believe there is a possibility that we were informed at some point -- we may have been informed at some point that the Tabby case was not a case at all. I am not sure. However, I know your Honor, that with reference to some matter, and I don't know whether it was Tabby or not, with reference to some matter, I know there was at least one in which a matter was not put in because it was no part of the bargain between us, because there was no prosecution contemplated in the matter whether or n[illegible]erman entered into any agreement with the prosecution.

Q Mr. Edwards, you said at the time the agreement was signed, everybody knew about Hellerman's role in Natco.

A Yes. I am sure it was virtually universally known, because I sat through the Natco trial and the testimony largely concerned the criminal activities of Michael Hellerman as I remember it.

Q   Did you discuss Natco with Mr. Morvillo prior to the signing of the agreement?

A   There is no question whatever that I had conversations with Morvillo concerning that matter on a number of occasions. However, I have no memory of talking to him about it in connection with the signing of this agreement. Indeed, the only thing I can suppose is, as I say, is that through an oversight it was left out because, at the time, I say it was a fact of which everyone was aware and perhaps we didn't think of it merely because the trial had already occurred and it was kind of over, dead.

Q   Can you say with any confidence whether you had discussions about Natco with Mr. Morvillo prior to January 26, 1973?

A   Prior to January 26, 1973?

Q   Yes.

A   Well, the answer to that is yes. However, when they were, in all likelihood they were way, way prior.

Now, I am assuming, sir, that the Natco case is the case involving a couple of firms on Long Island

and the thing was prosecuted by David Brodsky in the U. S. Attorney's office, and if that is the matter that you mean, that is the answer.

Q That is the matter.

A Yes.

Q Who drafted the written agreement between Hellerman and the government, the one that you signed?

A I don't remember who you would say drafted it. My best memory would be that I personally had a hand in it of some kind myself and who else did, I am not sure. Well, obviously either Morvillo or Wing or both had some hand in it and there may have been other people, too, and I would asssume that Judge Broderick would have talked it over with me and probably with Morvillo. However, my memory is hazy but I would be surprised if there were not language in there prepared both by myself and by Morvillo.

Q Did Mr. Hellerman tell you the disposition of the $80,000 in the Natco case?

Do you know which $80,000 I am talking about?

A I surely remember there was an $80,000.

THE COURT: Have you read this famous book we are talking about?

THE WITNESS: No, your Honor, I have never seen it.

THE COURT: Wall Street Swindler by Michael Hellerman.

THE WITNESS: I have heard of it.

THE COURT: But you have not read it?

THE WITNESS: No.

THE COURT: Or any page proofs or anything like that, manuscripts?

THE WITNESS: No, your Honor, I certainly have not.

A [Continuing] I remember there was an $80,000. I remember I had some conversations concerning it, and that is a matter that is of the present time I have no detailed memory of.

Q Do you remember with whom you discussed the $80,000 item?

A At some time very early in my representation of Hellerman, in other words, way prior either to the trial or to the signing of this agreement, I believe I had conversations with Morvillo concerning the 80,000 and obviously I had conversations with Mr. Hellerman.

THE WITNESS: Incidentally, your Honor, I probably ought to say for the record I have consulted with Mr. Hellerman and he has waived any attorney-client privilege.

THE COURT: He wouldn't have any but I am glad you did that. By writing this book he waived it.

Had this episode with Kurland occurred before or after this.

Q When were you retained?

A I was retained as I remember it at some time fairly close following the filing of the original Imperial fraud indictment.

MR. WEINBERG: Your Honor, to the extent it helps, Mr. Edwards' affidavit says approximately July 1, 1971 until approximately May 1973, Vincent Broderick and himself represented Michael Hellerman.

THE WITNESS: Imust apologize because as I sit here now, I am not sure how I derived the time July 1.

THE COURT: That clarifies it because this episode with Kurland occurred six months prior or five months prior to this witness coming into the case.

The letter from Kurland to the U. S. Attorneys is dated January 29, 1971. He and Mr. Broderick didn't get into the matter until July.

THE WITNESS: Your Honor, I can say with certainty and I would like to do so, that I had absolutely nothing to do with the handling of that $80,000 and had no contemporaneous knowledge of it at all, and I merely remember it as a past event with which I was concerned in some way as a lawyer representing Hellerman.

THE COURT: Thank you.

Q Do you know whether there were any promises made to Hellerman with respect to non-prosecution with respect to that $80,000?

A There was, that I can recall, no issue of any separate promise concerning that transaction at all. The promise that was made as I remember it, was that Hellerman with the exception of the please he was entering, Hellerman would not be prosecuted on any criminal case, any federal cases that were known to the government as of the time of the agreement, and this, of course, would have and should have covered that entire matter of that -- I believe you refer to it as the Natco case. As I say, it appears to me that this A to F list in Paragraph 7 of the agreement signed by myself and Morvillo, that there is merely an oversight in there concerning the Natco case.

Q Did you have something else you wanted to say?

A I was just going to say I have no present memory of an $80,000 transaction, being a crime in itself apart from whatever relationship it may have had to the overall Natco fraud. My memory on that transaction, now runs only to the point that I seem to remember the problem was on where the money went, and it may have gone to a couple of loan sharks or something. I don't know.

MR. SILVERGLATE: No further questions.

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CROSS-EXAMINATION

BY MR. WEINBERG:

Q Mr. Edwards, prior to January of 1973 when Mr. Hellerman testified in United States v. Ostrer, had you had any conversations with Robert Morvillo about the legal fee that Mr. Broderick or Mr. Broderick's law firm was going to charge Mr. Hellerman for representing him in his criminal cases?

A As you phrase it, that is a very broad question, and I couldn't say that I never had a conversation with Morvillo concerning our charging Hellerman fees.

THE COURT: Prior to January 26, 1973.

A [Continuing] It may have, because we had so many meetings with people in the U. S. Attorney's office and since I knew Morvillo well and he knew me well, there was a considerable amount of casual conversation on every conceivable topic.

Q Mr. Edwards, let me try to be more specific: Did Mr. Broderick ever tell you that Mr. Morvillo had interceded on Mr. Hellerman's behalf in order to get Mr.

1713

Broderick to reduce the fee he was going to charge Mr. Hellerman?

A No, absolutely not. I have no firsthand knowledge of any such thing and I have no secondhand knowledge of any such thing and I would be pretty sure I would know of it if it had occurred.

Q Mr. Edwards --

THE COURT: Is your reason for your last statement that you had a proportion of the pro rata share of the total fee? You were not a member of the Nizer firm?

THE WITNESS: No, I was not. I was really of counsel, your Honor, and Imerely billed them for my time. However, I believe I would have been familiar at the time with any communication of any real significance between Mr. Broderick and anyone in the U. S. Attorney's office .

Q To your knowledge, did Mr. Hellerman have any understanding with the government as relates to immunity for members of his family?

A No. However, I have the following memory, and I apologize for talking with hesitation but I really have no notes at all on these things.

I have a memory which is not a very strong one, but I believe the following thing happened at some time.

I believe I ascertained in the course of a conversation with someone in the U. S. Attorney's office that they had no interest in prosecuting some relatives, and I believe they were relatives of Hellerman's wife, and the thing is, that this, I have a very clear memory, this had absolutely nothing to do with any agreement between Hellerman and the prosecutors, and had absolutely nothing to do with any quid pro quo for anything. My memory is that these were not matters that the federal government had any interest in, wholly apart from any bargain they might or might not have with Hellerman, and when this information was ascertained, I don't remember -- I have no notion whether it was prior to the date of this agreement or following the date of this agreement. I merely remember that I learned that the U. S. Attorney's office had no interest in pursuing those people, and I must say at the present time, I do not have the slightest memory of what it is that they allegedly might have been prosecuted for, and I have no memory -- I have a general vague impression that they had not had much involvement in anything at all, but no specifics.

MR. WEINBERG: No other questions.

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REDIRECT EXAMINATION

BY MR. SILVERGLATE:

Q When you talk about members of Hellerman's

1715

wife's family, are you talking about Ira Schultz?

A I certainly don't think so.

Q What about his sister's husband, his brother-in-law? Would that be one of them?

A You know -- no, I do not think so. I am not positive of this. However, my memory is for some reason or another, his wife's brothers were somehow involved in some tangent way in connection with some one of these matters and I don't remember whether their involvement occurred before or after the signing of the agreement and I don't know whether this information I had was before or after, but my memory is that they were the people who I was aware were not going to be prosecuted. I have no present memory of any issue ever arising concerning the people you are referring to and I don't know how they were allegedly involved in anything, but you might be able to refresh my memory.

Q Did you transmit to Michael Hellerman the information that these relatives of his wife would not be prosecuted?

A Whoever they were that I received this information on, I would have assumed that Hellerman would have been made aware of this by me or Mr. Broderick or both.

THE COURT: Can you fix a time?

THE WITNESS: No, your Honor, there is absolutely no way for me to fix a time.

THE COURT: By year?

THE WITNESS: I do not think so.

THE COURT: Did it happen within the last six months of your representation of Mr. Hellerman?

THE WITNESS: I don't believe so, although I can't be sure of that.

Hadn't he already pleaded and been sentenced prior to the last six months of my representation? I think he had.

Q When was the end of your representation?

A It would have been when I returned to the U. S. Attorney's office in June of 1973.

MR. WEINBERG: He was sentenced I believe in November of 19972.

THE WITNESS: I would be pretty sure, your Honor, that I had not learned this during the last six months of my representation. I would have learned it earlier.

THE COURT: Prior to his sentence?

THE WITNESS: I surely would believe so, your Honor.

As I say --

THE COURT: Do I understand you inquried to see if they had a case against these people? Is that what your purpose was?

THE WITNESS: No, your Honor, I do not believe it was this. I don't believe it was the way your Honor puts it in your question.

I merely have a memory of a conversation with Morvillo or with Wing, but I believe it was Morvillo, in which I learned that the government was not pursuing any matters as to those people, and as I say, the one thing that I am absolutely certain of is, that this had nothing to do whatsoever with any quid pro quo or argument between the government and Hellerman. This had nothing to do with it. There were no considerations involving persons other than him in the bargain we made in return for his cooperation and testimony.

Q The bargain you are referring to, do you mean what was embodied in the agreemnt that you signed?

A Yes. I mean the agreement was an attempt to embody the bargain. It seems we may have made an error with regard to the Natco case in rattling off the list of prior cases.

Fundamentally, the agreement was that no prosecution of Hellerman on any matters in which he had had criminal involvement that were known to the government at the time the agreement was entered into.

MR. SILVERGLATE: No further questions.

MR. WEINBERG: Nothing else.

THE COURT: Thank you, Mr. Edwards, you are excused.

We will have a brief recess.

[Recess.]

[Continued on next page.]

Ostrer
2B pm

MR. DERSHOWITZ: I have appeared, your Honor.

THE COURT: Thank you.

MR. SILVERGLATE: Mr. Martin Roth.

MARTIN ROTH, called as a witness, being first duly sworn, testified as follows:

* DIRECT EXAMINATION

BY MR. SILVERGLATE:

Q Where are you a resident now?

A Hollywood, Florida.

Q Are you an attorney?

A Yes.

Q What State?

A New York.

Q You are not practicing, though, are you?

A No.

Q Mr. Roth, you were convicted, were you not, in two cases in which Michael Hellerman was involved?

A Yes, I was convicted in one, pleaded in another.

Q Those were in this court, is that correct?

A Federal Court, Southern District.

Q You served time in connection with that conviction?

A The first case, that is right.

THE COURT: I will take an offer of proof, here,

1720

I really am. I don't know what this witness can add to the scope of my hearing at all.

Would you be good enough to step out in the hall a minute or two?

[Witness leaves courtroom.]

THE COURT: I have urged you two attorneys to stipulate facts not in dispute and you haven't been able to do that and I recognize sometimes attorneys can't do it, but it is your duty not to waste my time or yours.

What are you offering to prove?

MR. SILVERGLATE: One thing and that will take me two minutes. I am offering to prove that Mr. Roth was a confidant of Mr. Hellerman and that Mr. Hellerman told Mr. Roth when Hellerman returned from Switzerland that in Switzerland he had deposited over $300,000 in cash.

THE COURT: I will take the proof. Get him back in here.

[Witness resumes the stand.]

BY MR. SILVERGLATE: [continuing]

Q Mr. Roth, when did you first know Michael Hellerman?

A L968.

Q How frequently did you see him from 1968 until 1973?

A Practically every day.

Q Are you a friend of his?

A Yes, I was.

Q Did you have meals together frequently?

A Yes, we did.

Q Did he discuss his business affairs with you?

A Yes, he did.

Q In the late summer or early Fall of 1972, was there a hiatus in your daily contacts with Michael Hellerman?

A Yes, I lost track of Michael for two or three weeks in the summer of '72.

Q Can you pinpoint what part of the summer?

A I believe it was in August of 1972.

Q At some point did you regain contact?

A Yes, I did.

Q Did you attempt during that two-week period to contact him?

A Yes. If I didn't see him, I called him every evening and there was no answer at his home for a period of two to three weeks.

Q When you finally saw him again, when would that have been?

A Somewhere around Labor Day, 1972.

Q Did you discuss with him the reason he was gone?

A Yes, I did.

Q What did he tell you?

A He told me he had the opportunity to go to Europe, Switzerland, to Italy and that he went there to put some money in a bank, open a bank account.

Q Did he tell you how much?

A Yes.

Q How much did he tell you?

A In excess of $300,000.

Q Did he tell you who it was that carried the money?

A Yes. Not directly in that first conversation, but between him, his girl friend Joanie Grossman and his wife Marion.

Q Did he say what kind of an account he opened up?

A A Swiss bank account, a numbered account in Switzerland.

Q Did he indicate the reason why he took the money to Switzerland?

A Yes.

MR. WEINBERG: Objection.

THE COURT: He is asking for substance of a conversation. I will take the conversation, the time and

1723

place and who was present.

Q At some point did he tell you --

THE COURT: Fix the time and place.

Q Was there a conversation on the subject of the reason why he took the money to Switzerland?

A Yes.

Q When was that conversation, sir?

A It was more than one. There were a number of conversations about it but in September of 1972.

THE COURT: Where?

THE WITNESS: My office, his home. We spoke about it openly. It wasn't just one particular conversation.

THE COURT: You may give the substance of the conversation.

Q What was the substance of the conversation?

A That he took the money away because he was afraid that some of his mob affiliates was going to take the money away from him.

Q Did he ever tell you in the presence of anybody else that he took $300,000 or in excess of $300,000 and deposited it in Switzerland?

A Yes.

Q Who would that have been?

A My ex-wife, Barbara Roth.

Q What was her maiden name?

A Charlotte Barbara Lee.

Q How long has it been since you have talked to your ex-wife?

A Over a year and a half.

MR. SILVERGLATE: No further questions.

*** CROSS-EXAMINATION

BY MR. WEINBERG:

Q Mr. Roth, you have been convicted of two felonies?

A That is correct.

Q And they involve stock manipulations?

A Yes, they do.

Q Snd they involve stock manipulations that you believe were engineered by Mr. Hellerman, is that correct?

A Yes.

Q And you believe you have Mr. Hellerman to thank for all the legal problems you have had?

A Yes, I do.

THE COURT: Are you a member of the Bar now?

THE WITNESS: Yes, I still am.

THE COURT: Did you ever have any hearing?

THE WITNESS: A hearing is pending right now

1725

the complete division.

THE COURT: For a 1971 conviction?

THE WITNESS: I was away until April '75 and living in Florida.

THE COURT: They took care of John Mitchell quicker than that. That is all I can say about you.

Go ahead.

Q Mr. Roth, the disciplinary proceeding you are currently undergoing, u think you have Mr. Hellerman to thank for that, is that so?

A Probably so.

Q Mr. Roth, did Mr. Hellerman pay for your honeymoon in 1971?

A It is difficult to answer. He purportedly paid for the honeymoon.

Q He used a stolen credit card to pay for that honeymoon?

A Since that time it has come to my attention he did.

Q When did you find out he used a stolen credit car to pay for your honeymoon?

A During the time of my trial.

Q Your first trial?

A That is correct.

Q When was that first trial?

A It was in December of 1972.

Q How did that trial end?

A In a conviction of obstruction of justice.

Q And you had a previous trial?

A No -- yes, there was a mistrial before Judge Frankel and I was retried.

Q At the time of that first trial, did you know that Mr. Hellerman had used the credit card to pay for your honeymoon, a stolen credit card?

A It was the month previous. I just don't remember.

Q When was your first trial before Judge Frankel?

A November of '72.

Q Your first trial was in November of '72. When did you find out that Mr. Hellerman had used a stolen credit card?

A Just previous, during the pretrial proceeding in the case.

Q When do you recall he told you about taking this $300,000 to Switzerland?

A Within 48 hours of his return from Switzerland and Italy.

Q Was that prior to the first trial you had before Judge Frankel?

A Yes.

Q And you were convicted of obstruction of justice in that case?

A That is correct.

Q What did you do to obstruct justice in that case?

A What did I do?

Q What were you convicted of doing?

A Well, I am still questioning the conviction, so I don't know how we can get into that.

THE COURT: You have an appeal pending?

THE WITNESS: I have done the time already.

THE COURT: What are you questioning? What do you mean by your answer?

THE WITNESS: I am questioning the verdict.

Q After that you pleaded guilty in another case, is that correct?

A That is correct.

Q You pleaded guilty to a stock manipulation?

A I pleaded guilty to a technical violation of a securities thing, 17H, a compromise plea.

Q You pleaded guilty to a felony that exposed you to a possibility of up to three years in jail?

A I already had a commitment it was only going to be probation.

Q You had a commitment before you entered your guilty plea you were going to get probation?

A That is correct.

Q Who gave you that commitment?

A The U. S. Attorney and my attorney.

THE COURT: State the anem for the record, of the U. S. Attorney.

THE WITNESS: The U. S. Attorney was Ira Sorkin.

THE COURT: Who was the trial judge or presiding judge over your plea?

THE WITNESS: Charles Metzner.

THE COURT: Proceed.

Q At the time that your guilty plea was accepted by Judge Metzner, Judge Metzner was informed that the government and your lawyer had made a commitment that you would receive probation?

A It was basically that, yes.

THE COURT: What do you mean by that answer?

THE WITNESS: What do you mean?

THE COURT: What do you mean when you say --

THE WITNESS: The judge wasn't commited

but it was pretty much reconciled if I took a plea and I was in prison, he was going to run the time concurrent to the sentence I was serving.

Q At the time that Judge Metzner accepted your guilty plea, he told you, did he not, he could send you to jail up to two years?

A I don't remember his words. I was in jail for three years and I really didn't care at that time.

Q I am asking you if you recall at the time you pleaded guilty, whether or not Judge Metzner informed you that he had the power to send you to jail up to two years?

A I don't knnow. I just don't remember whether he informed me or not.

Q He certainly didn't inform you that you will get probation at the time you entered your guilty plea.

A I knew there was a possibility of a two-year sentence.

Q And you knew Judge Metzner could have given you a two-year sentence?

A I suppose so.

Q Is that your recollection?

A Yes.

Q You were pleading to a technical violation although you could spend up to two years in jail?

A Would you repeat that question?

THE COURT: Frame another question.

Q Mr. Roth, in this conversation with Mr. Hellerman about the money going to Switzerland, did Mr. Hellerman inform you that he had told the United States Attorney's office that he was depositing all this money in a Swiss bank account?

A He did not tell me that. I was not aware he was talking to the U. S. Attorney's office.

Q At that time you were not aware he was cooperatin

A That is correct.

Q In fact you thought he was still involved in his criminal activity at that time, isn't that correct?

A That is correct.

Q In fact you had been involved in criminal activity with Mr. Hellerman, is that correct?

A I refuse to answer that question.

THE COURT: When did you first tell somebody, tell anybody, that Mr. Hellerman had taken all this money to Switzerland?

THE WITNESS: The next day I had a conversation with his attorney, Ernie Schlacter and told him about it.

Q Whose attorney is Mr. Schlacter?

A Mr. Hellerman.

Q He is his attorney?

A One of his attorneys.

Q Did Mr. Hellerman tell you that Mr. Schlacter was one of his attorneys?

A He was one of my attorneys as well. I had a conversation with Mr. Schlacter to that effect just the other day.

THE COURT: When did you first tell somebody --

THE WITNESS: The day after Hellerman told me.

THE COURT: And that was in 1971, '72?

THE WITNESS: The late summer, early Fall of 1972.

THE COURT: Who did you tell?

THE WITNESS: Ernie Schlacter.

THE COURT: You told Mr. Schlacter at that time that you knew from Hellerman's statement to you that he had taken this large amount of money to Switzerland?

THE WITNESS: Yes.

THE COURT: Anyone else that you told?

THE WITNESS: I don't recollect, your Honor. It was Mr. Schlacter that reminded me in a conversation the other day that I had that conversation with him.

Q Mr. Roth, where were you in the Fall of 1972, physically where were you?

A I was living in Forest Hills.

Q When was your trial, your second trial in 1972?

A The first trial was in 1972. The second plea that I made was in April of '74.

Q The first trial that ended in a mistrial. The second trial you were convicted.

A The first trial before Judge Frankel that ended in a mistrial was late November, 1972.

Q Were you in Forest Hills in December of 1972?

A Yes, I was.

Q And in January of 1973?

A I moved to Florida right after my conviction.

Q You went to Florida?

A Yes.

MR. WEINBERG: No other questions, your Honor.

THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. SILVERGLATE:

Q Mr. Roth, at the time of your plea in the second case, were you made any promises by the government as to what the government would recommend with respect to a sentence?

A The government had spoken to my attorneys. I was incarcerated at the time. They had spoken to my attorneys and said they would recommend a concurrent sentence if I would take a plea in the Automated case.

Q Did anyone tell you at the time that Judge Metzner had committed himself in advance to impose such a sentence?

A Most certainly not.

Q When you say there was a commitment to you that you would get probation, you don't mean that?

A I relied on what my attorney told me. That was basically it.

Q Answer my question. When you said, when you testified on cross-examination that you were told there was a commitment that you would get probation, you didn't mean that you would get it, did you?

A No.

Q You meant you were promised that the government would recommend it?

A That is correct.

THE COURT: Who promised you that the government would recommend a probation sentence?

THE WITNESS: My attorney.

THE COURT: Is that the same Mr. Schlacter?

THE WITNESS: No. It was an attorney from White Plains -- I just can't --

THE COURT: You can't remember the name of the attorney?

THE WITNESS: I can't remember the name.

THE COURT: But he was from White Plains?

THE WITNSS: Yes. I will produce the answer with a phone call but I can't recall his name at the moment.

Q You testified something about Hellerman paying for your honeymoon.

A He made it up as a wedding present that he paid.

THE COURT: That is actually in the Belmont transcript so there is no questior about the government's compliance as to that aspect.

MR. SILVERGLATE: I am just trying to figure out why the government asked those questions.

THE COURT: Do you want me to tell you?

Move along.

Q Mr. Roth, do you have any view on whether or not any commitments had been made to Hellerman as to when he would be prosecuted for tax related crimes?

MR. WEINBERG: Objection.

THE COURT: Sustained, as to form.

Q Has anybody told you, Mr. Roth, that Mr.

Hellerman would not be prosecuted for any tax related offenses?

MR. WEINBERG: Objection.

THE COURT: You could answer that yes or no.

A Let me hear the question again.

Q Has anybody told you that Mr. Hellerman has a deal with the government such that he will not be prosecuted for any tax related offenses that he committed prior to his written agreement?

A Is that before Mr. Hellerman went into custody or now?

Q Before he went into custody.

A I knew nothing about any arrangement he had with the government.

Q Do you now know? Has anybody told you since?

A Yes.

Q Just answer this yes or no. Do you have an opinion now as whether or not anything that you have testified to in this hearing thus far can end up getting Mr. Hellerman prosecuted for anything?

MR. WEINBERG: Objection.

THE COURT: Sustained.

Q Are you testifying now in order to get Mr. Hellerman into any trouble?

MR. WEINBERG: Objection.

THE COURT: I will let him answer that.

A No, in no way whatsoever.

Q In fact, you have a view that Hellerman probably can't be prosecuted for anything connected with the $300,000?

A I wouldn't imagine he could be prosecuted for anything.

MR. SILVERGLATE: I have no further questions.

*** RECROSS-EXAMINATION

BY MR. WEINBERG:

Q Mr. Roth, at the time you entered your guilty plea, didn't Judge Metzner ask you whether any commitment had been made to you as to the sentence the Court would impose?

A I don't remember. I was in a bad psychological state. I was in prison,my wife had left me with my children.

THE COURT: Didn'e he ask you how you were feeling?

THE WITNESS: Your HOnor, I just don't remember. I was away for three months on a sentence I didn't expect to be going through.

THE COURT: You didn't expect to be sentenced?

THE WITNESS: No. I didn't expect to be convicted, your Honor. I didn't feel I committed any crime and I still don't.

Q . But a jury found you guilty --

THE COURT: Don't argue that point.

A A jury found me guilty of obstruction of justice.

MR. WEINBERG: No other questions, your Honor.

MR. SILVERGLATE: No questions.

THE COURT: All right.

[Witness excused.]

MR. SILVERGLATE: If it pelase the Court, I have stricken off my witness list a half dozen of the witnesses I had contemplated and in view of your Honor's rulings, I have decided not to call them.

Therefore, that exhausts our witnesses for today. I would just like to state that we have asked the government to try to locate tomorrow Assistant Coghill who we have learned was an important figure in the Natco case for the government. I am informed by my brother he is in Denver, Colorado, not in Government Services.

MR. WEINFELD: So it is clear, I am not sure about that. I went back to the office to try to find out and I was told by somebody --

THE COURT: His name didn't come up until this morning.

MR. SILVERGLATE: I believe that is correct.

The second witness that we have asked for is Steven Schustek. Your Honor knows the status of that.

THE COURT: I haven't ruled about whether the probation service had to produce Schustek. I am really a little doubtful as to whether Mr. Schustek wouldn't be any more than cumulative and I think you ought to give me some basis before I prolong the hearings or make a burdensome suggestion that they drag him here from wherever he is hiding. As I understand it, he is in protective custody somewhere and it is not in the immediate vicinity of New York.

MR. WEINBERG: He has been relocated, your Honor. He is not in the immediate vicinity of New York.

THE COURT: Before somebody drags him in here, I would like to know why.

MR. SILVERGLATE: May I have one moment.

THE COURT: Yes.

[Pause.]

MR. DERSHOWITZ: Your Honor,may I make a reasonable suggestion?

THE COURT: Can't I first have a response about what is sought to be proved from Mr. Schustek, then you can make any suggestion you wish, reasonable or not. I have asked for something and I ought to be entitled to receive it.

MR. DERSHOWITZ: Your Honor, this is preliminary to that just for a moment.

We think we have four or five things that we could prove through Mr. Schustek. We are not sure whether w ecould prove those things. We are not sure whether we might be able to prove other things.

THE COURT: I am not having a fishing contest. If something has been proven already through Hellerman or any of the other witnesses, I don't need to bring Schustek here for it.

MR. DERSHOWITZ: We are at a disadvantage --

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THE COURT: What is it you offer to prove by Schustek? That is a reasonable question. Nobody puts a witness on the stand without a purpose, not just to show th tryer of the facts he is an evil person.

MR. DERSHOWITZ: We would like to prove that Mr. Schustek took the money.

THE COURT: And split it with Hellerman.

MR. DERSHOWITZ: Gave every penny of it to Hellerman.

THE COURT: Except for $5,000 that Winters got and $5,000 that this pillar of the Bar got that testified to this morning.

MR. DERSHOWITZ: Not quite 5,000.

In any event, it may not have been a $500 trans action.

THE COURT: Even so, I would be prepared to fi that the Natco money or the Merchandise Plus money was collected by Mr. Kerland substantially in the fashion in wh he described this morning and substantially all of it went to Hellerman, Winter and Kerland, and I don't believe that the Government is going to dispute that particular fact, so Schustek would be surplus on that score and I think I am pr pared to find that Schustek signed the check and that Schustek went to Paradise Island and that Schustek signed t retainer authorization for Kerland.

I don't believe Mr. Weinberg disputes any of those points. He may argue the significance of them but not the facts.

Have I misstated the facts on this matter?

MR. WEINBERG: I don't believe so, your Honor, except -- I just don't recall the testimony about what part of the 80,000 Mr. Winter may have received.

THE COURT: As I understand it, the book says $5,000 and I think Mr. Hellerman confirmed that.

MR. DERSHOWITZ: Yes, he did.

THE COURT: And he said the other lawyer got less than five and I think I have a recollection it might have been $3,000 but as between Hellerman and Kerland, I believe that Kerland got 500.

MR. DERSHOWITZ: Your Honor, the remaining critical credibility dispute is this:

Mr. Hellerman testified under oath, unequivocably that he told Morvillo he needed the 80 for the shylocks. He described the circumstances to Mr. Morvillo, how he got that $80,000 to the shylocks. He described how he sent Mr. Winters down to West Street to meet Johnny Dio. He described how he made sure to get rid of it and he described in sworn testimony that he told that, in detail, to Mr.

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Morvillo.

THE COURT: Where does Schustek come into that?

MR. DERSHOWITZ: Mr. Schustek was involved in several of the meetings with Mr. Morvillo.

If your Honor would regard it as cumulative, I don't know, there is a credibility dispute here.

THE COURT: I didn't understand Mr. Hellerman to say that he told any of those things to Mr. Morvillo in Schustek's presence, and it would be highly irregular and unusual for the FBI and the U.S. Attorney to interview an informant, which is what they believe Hellerman to be then, in front of another wrongdoer.

MR. DERSHOWITZ: Your Honor, we have established this, that Hellerman brought Schustek in to be an informant and on the Nato matter, they were joint informants. The information that was given -- what we would like to do frankly is this, speek to Mr. Schustek on the telephone.

THE COURT: I don't know if that is feasible. If that would betray his location, that wouldn't be feasible.

Implicit in this whole situation on witness relocation that some of these witnesses get relocated in my humble view they would stick out like a sore thumb. They go to places where there is law and order.

MR. DERSHOWITZ: I would be happy to have Mr.

Schustek at the Government's suggestion, call me under circumstances where A, I could not find out where he was calling from, but B, I think this is more significant. I would like a representation if by some inadvertence I was to find out where he was located, I would not even tell co-counsel or my client.

THE COURT: I can't make any recommendation to the U. S. Marshal Service or Federal Probation Service how they do their business and I decline to do so. If there is a necessary purpose for Schustek's presence and if it is necessary in the interest of justice, I will have them bring him here, even if he is in Jamaica but I would have to have a showing of necessity and I am not sure on my recollection of the record, you have made such a showing.

MR. DERSHOWITZ: Your Honor, the critical issue is the Government's failure to disclose 3500 Brady Jencks material at the trial. I asked Mr. Morvillo the final question, did he learn about the fact that this money was spent by Hellerman for his own use prior to the Belmont trial. His answer was, well, if it is in the Belmont trial, I did learn about it.

THE COURT: He said the Natco trial --

MR. DERSHOWITZ: I asked him if he had any independent recollection and he said no.

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It seems to me very clear, your Honor, and we are prepared to rest on this one; if Mr. Morvillo knew at any point prior to the Belmont trial, without regard to what happened previously, if he knew that money had gone to the shylocks from Mr. Hellerman, that had been used by Mr. Hellerman to save his life, for his own purposes, that it had been divided among shylocks, if he knew that before the Belmont trial and failed to disclose that, that is the entire case, that is the key to our presentation.

THE COURT: Would you refer me to the point in the transcript where Hellerman states that Schustek was present.

MR. DERSHOWITZ: No, your Honor. There is no point in the transcript.

THE COURT: I am trying to focus on the necessity for Schustek. I am not deciding this case this afternoon.

MR. DERSHOWITZ: When we examined Mr. Hellerman we did not know what Mr. Morvillo would testify to. In fact I was certainly under the impression that Mr. Morvillo would testify that yes he learned about it, yes he knew about it, but he had warned him.

THE COURT: Show me Mr. Hellerman's testimony, the page number, please.

MR. DERSHOWITZ: There are two points where he states it. I think one is on page 60 "I told the FBI and I told Mr. Morvillo" --

THE COURT: You don't have to read it. Just give me the page citation.

MR. DERSHOWITZ: Page 60 is one and there is another page. Page 46 there is another reference and in fact looking at the reference, I did not ask him that question. I want to make an honest representation. It simply didn't occur to me to ask him that question. I didn't know there would be a dispute about this and he says, "Mr. Morvillo told me Schustek, if you want to hire a lawyer, will be processed by an order demand."

It is a reasonable interpretation, no more than reasonable but certainly it is not excluded that Schustek may have been involved in some of these discussions and at least I would like to inquire of Schustek if he was.

THE COURT: I don't think there is any reason to believe that the U. S. Attorney and the FBI would interview Hellerman in the presence of Schustek and I really don't think --

MR. DERSHOWITZ: We have more than that. We do have some references, we will see if we can find them and there are references in the book, too. I am now in the

7rke

absence of specifics, but I am remembering there is a reference in the book where Hellerman said I brought Schuste up to talk to Mro Morvillo, and I am fairly confident that there were meetings at which Schustek and Hellerman appeared together with Morvillo to discuss aspects of the Natco case.

THE COURT: Mr. Weinberg, can you shed any light on this? Do you have any 302's that tell you the answer?

MR. WEINBERG: I do not, your Honor, I haven't seen any.

MR. DERSHOWITZ: That may be the way to resolve it.

THE COURT: That is all right, but I want to go forward and conclude my hearing. That is my real purpose, a I have set aside some time for you tomorrow. I don't know yet what matters Mr. Weinberg has and I want to take things a step at a time.

As I understand it, apart from Schustek and Coghill, what else have you?

MR. SILVERGLATE: The only other witness left is Renner, and I have already told your Honor I will make arrangements, and I have spoken to my brother about this, work out something with Renner so he goes through his tapes right away and anything relevant that counsel for both sides be allowed to hear.

THE COURT: That is only those two or three places where Hellerman testified that Renner garbled the tapes. I am expressing it in short form; that Hellerman testified in effect what he put in the book was not on the tapes. I want you to make it very clear to Mr. Renner and anyone else.

When will you have that, do you think?

MR. SILVERGLATE: Mr. Renner said it would take him more than one day to get the tape. Therefore I assume he will have them by tomorrow.

THE COURT: Is there anything else besides that that you will have?

MR. SILVERGLATE: No, your Honor.

I will just remind the Court we have some requests for documents, some of them in motions. We would like to look through them. Also, as a result of today's hearing, we would like access to the Government's Natco file, especially documents which might shed light on --

THE COURT: I already made a direction what he was to look for in that connection, and I decline to change that direction. I think that is an adequate direction that I told Mr. Weinberg he had to comply with and I will not broaden it. Of course the Clerk's file is open to you as you know.

MR. SILVERGLATE: Your Honor, there was testimon by Mr. Morvillo that Jules and Stapleton of the FBI might have taken notes of Hellerman's discussions with them. I would think we would be entitled to those.

THE COURT: Mr. Weinberg, as I understand it is looking for those. That is the 302's we are talking about.

MR. WEINBERG: The 302's of Mr. Jules and Mr. Stapleton as to the Natco case, is that correct?

THE COURT: Yes, that is what we are talking about.

MR. SILVERGLATE: I wasn't limiting it necessarily to Natco.

THE COURT: What else are you looking for?

MR. SILVERGLATE: All of Mr. Morvillo's notes that might be in the file of his discussions with Hellerman.

THE COURT: I have made my direction about that and I am sticking with what I already said on the record.

MR. WEINBERG: Your Honor, so it is clear and so this doesn't come back at a later time, I cannot represent to the Court that I have undertaken in any way to look through every file in the U. S. Attorney's Office in connection with Michael Hellerman.

THE COURT: I have made a direction and I am not going to paraphrase it or repeat it. I am standing on what

I said in the record. I will not try to chew the same cabbage twice. I made a ruling and whatever ruling I made, I expect you all to comply with.

Try to rephrase it and there will be some slight difference and it won't be effective.

MR. SILVERGLATE: Your Honor made the ruling with respect to Wing. Does it now include Morvillo? Your Honor did make a very specific ruling.

THE COURT: As to Wing only?

MR. SILVERGLATE: I thought it was to Wing only, as to the kinds of materials --

THE COURT: As I understand it, it sort of represented the debriefing of Hellerman notwithstanding what he says in the book, was not conducted by Morvillo but by Mr. Wing.

I will broaden the same direction I made as to Mr. Wing to include any notes that the U. S. Attorney has concerning Mr. Morvillo.

MR. SILVERGLATE: That is it from Mr. Ostrer's end of the case.

THE COURT: What will you be having, Mr. Weinberg?

MR. WEINBERG: Your Honor, I am considering the possibility of calling Mr. McGuire, but other than that, I have nothing else.

THE COURT: Notwithstanding your lack of success up to now, I will ask you both to do the same as I have told you to do several times before, talk about Mr. McGuire's testimony and see if it can be stipulated to.

MR. WEINBERG: I will do that. That may be possible.

THE COURT: You are bringing in these attorneys like Mr. Edwards who are in outside practice and you subject them to a hardship and it is not necessary unless there is something in controversy.

MR. DERSHOWITZ: Your Honor, we have gone through very carefully and lest the Court not be aware of it, we have in fact stricken many witnesses from the list.

THE COURT: I am not finding fault. I am just encouraging you to save time.

MR. DERSHOWITZ: Mr. Edwards was in New York and we did it to suit his convenience.

MR. SILVERGLATE: Your Honor, for the convenience of the Court and my brother, it is our intention to submit copies of certain public record material, material that is already in the Court record in other cases so the Court does not have to, in order to take judicial notice of something, it doesn't have to go looking through transcripts.

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THE COURT: Certainly. You have to generate a presentation to the Court which I previously directed you to work together in doing of exactly what Brady and 3500 material was furnished to Mr. Edelbaum at the time that the direct testimony of Hellerman was concluded.

MR. SILVERGLATE: We will have to get Mr. Edelbaum's cooperation.

THE COURT: I don't know that you will because that ought to be something that you could reproduce from your trial transcript before Chief Judge Edelstein and the U.S. Attorney's file.

MR. WEINBERG: I think that is one thing we would be able to agree on.

THE COURT: That is what we try to do with our trial records, but I will say in my rather hurried reading of the trial record in preparation of this hearing, it wasn't quite clear to me precisely what was turned over and the full force and effect of it.

You must remember that the turning over is one thing. Just because it was turned over does not mean he had to use it and in fact there may be materials that were turned over that he did not use, or which were used by co-defendant.

Okay.

What else will you have?

MR. WEINBERG: That is it. The possibility of Mr. McGuire but I will first discuss it with Mr. Silverglate and Mr. Dershowitz and it may not be necessary to call him.

MR. SILVERGLATE: Your Honor, in order that I might be able to inform Mr. Renner of the time constraints under which we are operating so I can encourage him to do the review of the tapes quickly, might I ask the Court if I can tell Mr. Renner a date by which he should be --

THE COURT: I would like him to do it as soon as possible. As soon as you get it, I would like it turned over to counsel.

I can continue this hearing tomorrow if there is anything useful to be accomplished on it. It is not clear to me whether there is any more proof I can take tomorrow.

MR. SILVERGLATE: There is nothing from our end that can be ready by tomorrow. Mr. Renner probably won't have the tapes by tomorrow.

MR. DERSHOWITZ: What we would like to do, if possible, your Honor, if Mr. Weinberg, and perhaps one of us can meet with Mr. Weinberg or Mr. Weinberg with the head of the protective service and inquire as to the feasibility of a discussion with Mr. Schustek under circumstances which are satisfactory to the Protective Service so as to avoid the necessity of your Honor making a ruling.

THE COURT: I have asked Mr. Weinberg to look at the 302's. I have no basis on which to assume that anyone was debriefing Hellerman in Schustek's presence. It just doesn't make sense and for very obvious reasons.

MR. WEINBERG: Can I make a suggestion --

THE COURT: Am I, right or wrong? You won't interview Schustek in the presence of Hellerman or vice versa, would you?

MR. WEINBERG: I won't.

THE COURT: You don't think Mr. Morvillo would?

MR. WEINBERG: No.

MR. DERSHOWITZ: We have evidence in this case that Mr. Morvillo did debrief Mr. Hellerman in the presence of Mr. Winters.

THE COURT: That is his attorney?

MR. DERSHOWITZ: It was not clear whether they were dealing with him as attorney-client or potential additional informant, and I think the inference, and perhaps we should submit some further documentation --

THE COURT: I would like Mr. Weinberg to look into his 302's and see if there is any basis to believe that Schustek was there and I leave it to you gentlemen as members of the Bar of the Court to confer reasonably and see.

It is much better to satisfy any suspicions if possible by some informal procedure than to leave the matter in doubt.

By the same token, I will not require him to come in here fruitlessly. If they have him hidden from the mob. You know he leaves the place where he is and show up testifying in New York, somebody can put two and two together and decide that the fellow who is in such and such an identity was missing at or about the time the fellow was here in New York. I don't want to be unfair to Schustek or the Protection Service.

MR. WEINBERG: Can I see what I can find out ab that this evening and maybe I can have some discussion with Mr. Silverglate or Mr. Dershowitz about other witnesses and can I suggest that we convene tomorrow morning and report to the Court.

THE COURT: You can convene tomorrow morning and I will take whatever I can take and whatever I can't take tomorrow which is unfeasible, I will have to take at a future time, unavoidable though it is.

I set aside what I thought was enough time for you and I will have a little hiatus before I can resume the hearing.

MR. DERSHOWITZ: Your Honor, in response to tha I can't think of anything you could possibly take tomorrow.

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THE COURT: Let's see. Maybe Mr. McGuire is coming in.

MR. DERSHOWITZ: This is simply a request as a matter of convenience. If we are not going to convene tomorrow, I would like to go home and if the only purpose of the meeting is to simply report to the Court, I would prefer that we leave the matter open with Mr. Weinberg. If there is going to be any calling of witnesses or anything of that matter, yes, but if not, perhaps the report can be done --

THE COURT: I don't want to waste the available court time if I can take some proof and I don't know as of this moment whether there is any proof I can take tomorrow; so sympathetically though I am towards your other obligations, one of you, either you or Mr. Silverglate will have to come in here tomorrow so I don't lose the trial time.

MR. DERSHOWITZ: That is understandable.

THE COURT: If you are satisfied by the end of the day that you are not going to have any proof taken and you want to take the responsibility for leaving, that is your affair.

MR. DERSHOWITZ: Your Honor, we would like to request permission, if Mr. Hellerman is still available and the protective service is still available, if it can be arranged for us to begin telephonically or any other way to ask Mr. Hellerman whether or not Mr. Schustek was at any such meetings, a question which I simply did not ask because I didn't think that was an issue in the case.

THE COURT: There is no reason why that couldn't be found out.

MR. WEINBERG: Your Honor, several hours ago I had asked Mr. Silverglate whether he had any additional need for Mr. Hellerman or Mr. Partington and I left a messag that Mr. Hellerman could return. I don't know if they got the message.

THE COURT: Find out and if he hasn't returned, maybe you could make a telephone inquiry of Mr. Hellerman if he is still in the area. That is unfortunate but if you told counsel that, it should have been done on the record and I would have told him to go home.

I will have you come back 10:30 tomorrow. If Mr. Dershowitz can't come, you, Mr. Silverglate can come.

MR. DERSHOWITZ: Could it be at 9:30?

THE COURT: We have other matters going on.

MR. DERSHOWITZ: 10:30 is fine.

THE COURT: Come in at 10:15.

I will continue Mr. Ostrer on his present bail subject to the standing order of the Court and he too is to be here at 10:15.

(Adjournment taken until 10:30 a.m., Thursday, May 12, 1977.)

rke 439

LOUIS OSTRER,

vs. 77 Civ. ~~1085~~ 1805

UNITED STATES OF AMERICA

May 12, 1977
10:15 a.m.

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(Hearing resumed.)

THE COURT: What is the status of the matter today, gentlemen?

MR. WEINBERG: Your Honor, I have discussed the situation with Mr. Silverglate and Mr. Dershowitz. The Government at this point does not contemplate calling any witnesses.

Your Honor, the Government and defense counsel would seek some guidance from the Court in connection with Judge Broderick. We were instructed, your Honor not to call Judge Broderick as a witness.

THE COURT: You weren't really instructed. I instructed you generally not to call anybody that wasn't necessary, and I didn't limit you as to who you could call or not call. It's just that you don't burden the Court, I am not just talking about my burden, but another District Ju who as a full time judge with more pending cases than I have because he started later in time.

I will come back on that point.

Let me hear from Mr. Silverglate.

MR. SILVERGLATE: If it please your Honor, first of all I would like to report Mr. Roth gave me the name of the lawyer that represented him on his plea of guilty in this Court which he had forgotten.

He was an appointed lawyer?

MR. SILVERGLATE: He moved down there. He lives there. Leon Greespan of the firm of Greenspan and Arnou.

Anyway, that is the attorney.

I spoke again to Mr. Renner. He is in the process of going through his tapes. He said how long does he have and I said please do it this week and get back to me the first of next week.

I am in the process of going through the transcript picking out those areas in which your Honor said that Mr. Hellerman moved back from the book and those are the areas that Mr. Rennder will select out tapes that will be played for the United States Attorney and myself. If either of us wish your Honor to hear them or wish them made part of the record --

THE COURT: What I will let you do is to give me a transcript, if you could, a typewritten transcript of the portion of the tape that is different from the book. The point we are interested in is, Mr. Hellerman testified that the co-author Mr. Renner had not adhered to what he put on the tapes. He explains inconsistencies between sworn testimony in the book and that explanation and the tapes will either bear that out or they won't and I think you will wind up with no more than two or three pages of typewritten transcript of tape, and I do ask the two of you or three of you to sit down as attorneys should and agree upon that.

MR. SILVERGLATE: I am sure we will be able to do that. If you don't want to waste the time and money making transcripts, you may be able to stipulate the ultimate facts, that the book is consistent with the tapes and such and such, or it is not consistent.

Reasonable people should not differ over that once you have heard the tapes.

MR. SILVERGLATE: Mr. Renner was concerned about that if there is on the tapes any information which might identify or locate Mr. Hellerman, he wouldn't want that disclosed and I said fine, in that case we will make a transcript and you can write out all those features.

THE COURT: The only part of the tapes that you have to have are the parts that relate to the topics or inc dents with respect to which Hellerman has testified before me that Renner did not accurately reproduce what was on the tape.

MR. SILVERGLATE: Then that is under control. We will have a submission to make which will not require open court time.

THE COURT: Fine.

MR. SILVERGLATE: I am in the process of compiling a certain public record, court record material for the convenience of the Court and the Government so you don't have to go around to various case files, and I will submit that with our memorandum or in advance of our memorandum so the Government can see them in advance.

THE COURT: If anything is too bulky, I will requisition it from the Clerk's office if properly cited, but I do prefer you do it the way you suggest.

MR. SILVERGLATE: I will do it the way I suggest.

The Government and myself will sit down today, if it is convenient for the Government, if not, tomorrow morning. I am willing to stay in town in order to work out a stipulation what material was given to Mr. Edelbaum as 3500 material and Brady material.

THE COURT: And put it together so I can see it.

MR. SILVERGLATE: A packet will be put together

rke 443

for both sides.

As I understand it, the Government and defense counsel are in the process of discussing, and as I understand the Government is considering trying to arrange a telephone call with Mr. Schustek, so I and my brother on this end and Mr. Schustek on the other end, can have a short conversation which I think probably could eliminate any doubt as to what Mr. Schustek, if called, will testify to. We will only be back to the Court on that if it turns out he has something that either side considers to be very significant. In the absence of a finding like that --

THE COURT: You have lost me. Because to the extent it applies to Morvillo's credibility, it doesn't seem very significant.

MR. SILVERGLATE: That is the extent to which we are interested, your Honor. I hope we can do that today, if not tomorrow morning. I would like to clear up these details this week.

I have handed over to the Court a clean copy of the book which is in the hands of the clerk now, your Honor. When I say clean, I mean without notations on it.

THE COURT: What happened to the copy that was marked the other day? There were two copies floating around here yesterday, weren't there?

rke 444

All right.

MR. SILVERGLATE: There were about ten copies floating around yesterday. I think the book has already made a profit.

On the Judge Broderick issue --

THE COURT: I will take that up with you in a moment.

MR. SILVERGLATE: As I understand it, the Government is going to be checking through FBI 302 reports, is going to look at the Natco file and is going to be looking at the notes of Mr. Wing and Mr. Morvillo in search of Brady and 3500 material, including but not limited to, material on the Natco situation.

That I believe is every open issue in the case, your Honor, at this point.

That is it, your Honor.

MR. WEINBERG: Your Honor, can I put a couple of things on the record to clarify some points.

Mr. Hellerman informed me when I spoke to him last night that he things, he is not positive, but he thinks he may have testified that when he returned from his European trip he had in the United States approximately $75,000 left. He is not sure that he testified that way but he thinks he may have. In fact he has thought about it and he may have had $160,000 and I didn't want to put that on the record and inform the Court and counsel.

The other matter that I wanted to relate to the Court was that Mr. Wing in his affidavit stated that to the best of his recollection, he did not discuss the certain matters -- I withdraw that. I am sorry.

In connection with Mr. Wing, he discovered in looking through certain files of his, certain memorandum that he alluded to yesterday in his testimony, memorandum of February 6, 1973 and May 25, 1973 in connection with the Government's efforts to put Mr. Hellerman into a safe house.

THE COURT: This is following the trial?

MR. WEINBERG: Following the Ostrer trial but after Mr. Wing testified I wasn't sure it was made clear in connection with Mr. Wing's testimony that he does recall after seeing those memos the efforts he made in February, 1973 to secure Mr. Hellerman's incarceration in a safe house.

THE COURT: Is there anything in those papers which would be susceptible of the inference that any prior problems had been made other than what was set forth in the written agreement?

MR. WEINBERG: I don't think so.

THE COURT: If there is any question about them, you can mark them and I will look at it.

MR. DERSHOWITZ: Does your Honor have any objection to defense counsel seeing them?

THE COURT: I suppose not.

MR. WEINBERG: I do not. I do not have clean copies. Why don't I make these copies available to defense counsel?

THE COURT: In your subsequent conference.

MR. WEINBERG: Yes.

THE COURT: I will take a brief recess. Stand by, gentlemen.

(Recess.)

(In the robing room.)

THE COURT: I would like to take up with you what your date and time table is and I don't want to put anybody under unfair pressure and I don't want to get into a hassle about dates and times outside, so let me get your informal input as to how best you can handle these responsibilities which each side has undertaken and I will make directions as to the dates. You can discuss it off the record.

(Discussion off the record.)

THE COURT: It is understood that either or both counsel, jointly or separately, are entirely free to visit with Judge Broderick providing he is willing to do so, and they may, either of them, talk to him if he is willing to do so and if following such discussions it is considered proper to either take his affidavit or stipulate to his testimony or call him as a witness, anyone of those procedures may be followed at the option of either attorney.

Is that satisfactory?

MR. DERSHOWITZ: Yes, your Honor.

MR. WEINBERG: It is satisfactory to the Government.

THE COURT: I would like you all to convey that point to him or his secretary. I am not directing him to hold an interview with you. How he does it or when he does it or takes how long he does, that is his discretion.

I will go out and open Court and make the direction that you come back on the 31st.

MR. WEINBERG: Your Honor, I would like to take up the matter of Mr. Ostrer's bail. It will be the Government's position that Mr. Ostrer should have to surrender to him.

THE COURT: Maybe you best do that outside unless there is some special reason, you should do that in open court.

MR. DERSHOWITZ: Can we go off the record a moment?

THE COURT: Yes.

(Discussion off the record.)

(In open court.)

THE COURT: As I understand it now, it will be possible for this matter to be marked fully submitted on the 31st, at 9:30 a.m.

Do I state your understanding correctly?

MR. WEINBERG: Yes.

MR. SILVERGLATE: Yes.

THE COURT: I will resume the matter at that time. It is continued to that time for all purposes and at that time I will receive exhibits and stipulations and other materials contemplated by the parties.

Following that date I would probably give you a short time for post submission memoranda, but I think it ought to be a very brief period. I think you ought to be able to get that done quite promptly, because the only legal issues you have to brief are now presently known to you, so it ought to be a matter of a very few days after. I am not making a direction at this time on that point.

If there is nothing further --

MR. WEINBERG: Your Honor, the Government has an application that Mr. Ostrer's bail be revoked and that he be ordered to surrender tomorrow morning at 10:30.

THE COURT: Why tomorrow morning?

MR. WEINBERG: The Government would consent to giving him one day to surrender.

Your Honor, Mr. Ostrer was convicted over four years ago after a very serious crime. A three-year prison sentence was imposed upon him. His conviction was affirmed by the Court of Appeals over three years ago. Mr. Ostrer has not begun to serve any of his jail time. He is now before the Court on a pteition for writ of habeus corpus.

Your Honor, I believe even if the Court were to view the facts in a way most unfavorable to the Government and were tomake findings that the Government may have violated any Brady obligations, Mr. Ostrer still would not be entitled to a new trial.

I think, your Honor, under the Agurs decision and decisions in this Court since Agurs, the testimony is that Mr. Ostrer would have to show that the Government failed to disclose created, would create a reasonable doubt as to Mr. Ostrer's guilt. Even if we use a less stringent test such as a significant chance that the omitted testimony may have resulted in a different verdict or any testimony that the omitted evidence may have had some impact on the jury, I do not believe that a review of the record in U.S. v. Ostrer would show anything in connection with the Natco matter or other matters raised by Mr. Ostrer could have possibly affecte

the jury's verdict.

Mr. Ostrer's able trial counsel had available to him a great deal of material to work with in implementing Mr. Hellerman and any of this additional material would have been almost trivial and diminimus compared with all the other material that Mr. Ostrer's attorney was effectively able to use in cross examining Hellerman at the initial trial and the Government believes even if the Court should find we did violate our Brady obligations, which the Government of course will urge the Court we did not, that that couldn't have had any possible effect on the jury's verdict in finding Mr. Ostrer guilty over four years ago.

Your Honor, maybe people file habeus corpus petitions and they are litigated while the individual is incarcerated. I think there is no significant chance that Mr. Ostrer will prevail on the merits of his habeous corpus petition currently before this Court and I would respectfully move that he be ordered to surrender, your Honor.

THE COURT: If I really agreed with what you said about the merits of the matter, I would make oral findings on the record and conclude the case.

I think there is fair ground for litigation presented here.

MR. WEINBERG: There is no doubt there are factual disputes. The Government's point is, even if he resolved--

r' 451

THE COURT: I don't have before me, and it is not anybody's fault -- I don't have before me all of the 3500 material which was delivered to Mr. Edelbaum. I know it was physically impossible for you with your adversary together to comply with my direction made yesterday, because that will take several days' attention on your part, but I am being asked in effect to assist a significant element of this case, namely what was given in compliance with the Brady doctrine at the trial, really in a vaccum, so to speak, and unfortunately I did not try this case so I can't call on my independent recollection of the matters which took place in open court prior to the commencement of the cross examination of Hellerman on Ostrer's trial.

MR. WEINBERG: Your Honor, the testimony to the Government would be the actual cross examination of Mr. Hellerman which is available to the Court.

THE COURT: That I have read, but I don't think that is the sole testimony by any means.

MR. WEINBERG: Even these additional matters such as Natco, if they had been disclosed, could have possibly made any difference in light of the cross examination that already went on of Mr. Hellerman four years ago.

Mr. Edelbaum was able to go through an entire series of crimes that Mr. Hellerman had testified about, that he was now being immunized about, that he had initially made agreement with the Government that he wouldn't commit any more crimes and he went out and broke that agreement and now the Government is offering him again as a witness who is supposed to tell the truth and not commit any more crimes. All of that Mr. Edelbaum quite effectively used in his cross examination of Mr. Hellerman, and I sincerely submit to the Court this additional material such as Natco, would have been absolutely trivial compared to all the other information that came out during the Ostrer trial concerning Mr. Hellerman.

THE COURT: You are in effect asking me to suppress a preliminary conclusion on these points with respect to the question whether or not he ought to be continued on bail.

I will hear from Mr. Dershowitz.

MR. DERSHOWITZ: The submissions in this case are, of course, incomplete and until the submissions on the facts are complete, it is not even possible to know which legal standard apply. The most recent Supreme Court decision in Agurs set up three different standards.

If your Honor concluded no possibility of relief existed under any of the standards on the basis of all the submissions made in affidavits, no hearing, no taking of Court time would have been necessary.

There has been taking of evidence. It is incomplete, although the oral testimony is complete and surely, under the mostly practical standard of Agurs, relief would be granted because the cross examination would not be the guideline at all.

Indeed, one can have a very effective cross examination, one can read a cross examination and still not be able to make any determination what might have been done on cross examination, had there been other evidence or other material available.

As we will develop later on in our brief on the matter, after appraising the 3500 material that was available to Mr. Edelbaum and comparing the 3500 material that should have been available to Mr. Edelbaum, not only the nature of the cross examination that could and would have been conducted but the nature of the argument to the jury as well, which must be based on evidence and the evidence was not then available.

Mr. Weinberg does not contend, nor is there any danger of flight in this case as this Court has recognized that Mr. Ostrer has been in Court timely for every proceeding. He is working intimately with counsel on the development of the factual material in this case and will be continuing to work with counsel.

Mr. Ostrer has a unique knowledge of the background and record in this case which is very important to the continuing preparation of material.

It seems to me this is a uniquely imappropriate time for the Government to be seeking surrender when we have a firm schedule fixed, it is a brief schedule, we are not talking about long periods of time, to allow your Honor to base a determination on the complete record in this case, on the complete briefing of this case. We have not made this point. Our legal argument as every good lawyer knows, one does not conduct examination of witnesses in ways so as necessarily to create the entire legal case altogether. What we have to do at this point is to look at the transcript, compare the transcript with the previous transcript, look at the record material and make what we hope will be the most effective presentation of our case.

Until such time and the Court has had an opportunity to consider the matter, we will assure the Court there will be no danger of flight or any other kinds of dangers recognized by the applicable statutes. The case and material presented here is a serious colorful one and for all those reasons we would hope and argue that bail should not be revoked at this point and that any consideration of bail should be postponed until the termination of the merits of his motion.

MR. WEINBERG: I don't think that the issue here is that there is a colorable claim. I think there is a much higher standard the petitioner should have to meet before he is given bail on a habeus corpus. I think giving of bail in a habeus is very rare.

THE COURT: To an extent, we are really preserving status quo. This is not to be compared with a case where a person pleads guilty and goes to prison or is convicted and goes to prison and after he communicates with the jail house lawyers, he files a writ. Those papers, most of them, are frivolous, they don't raise any question of significance and I don't think you can compare them to the situation in Ostrer's case or the part. Here we have somebody who is on bail at the time these applications were made. The applications are serious enough to require the attention of the Court. They are not papers that can simply be endorsed and file like most of the 2255 proceedings are. I wrote at length on the issue of his bail and I don't understand that the Government contends there are any particular changes that change the situation and I think would be embarrassing to the administration of justice if he were confined tomorrow and then it would develop within thirty days or so his writ were granted. That would be the type of conduct which

rke 456

brings the administration of justice into disrepute and there are no countervailing motives which would require the Court to revoke his bail. The habeous more or less conceded he isn't immediately threatening the public peace or showing any propensity for flight. He has complied with the terms of his bail. I will not repeat what I set forth on the last occasion or one of the prior occasions when I had reason to consider his bail.

I am not making any definitive determination towards the future, but I do believe at least pending the further order of this Court, pending such time as the Court can have a look at all of the issues which are open here and for much the same reasons as I set forth on June 4 of last year when I continued his bail, that it is reasonable to continue his bail pending a further order of the Court.

There are some fortuitous factors in this case. One of them, of course, is, that the book only recently hit the street and I don't think this relator is charged with notice of the existence of the book prior to the time his attorney obtained the galley proofs from the publisher and submitted the first of these motions and that is not so long ago. I don't have that date immediately at hand. It is within a very brief period of time.

I think it is a proper exercise of my discretion

rke 457

under all the circumstances to continue his bail at this time and it is so ordered.

I have explained to you your obligations under the bail bond, haven't I, Mr. Ostrer?

THE DEFENDANT: Yes.

THE COURT: You understand if you don't comply therewith you can be prosecuted for the Federal felony of bail jumping wholly apart from your guilt or innocence in this case?

THE DEFENDANT: I have every intention of complying with it.

THE COURT: I will be in recess.

(Recess.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOUIS OSTRER,
Plaintiff,

vs. 77 Civ. 1805

UNITED STATES OF AMERICA,
Defendant.

----------------------------------x

Before:

HON. CHARLES L. BRIEANT, JR.,
District Judge.

New York, May 31, 1977.

APPEARANCES:

ALAN DERSHOWITZ, Esq.,
and
SILVERGLATE, SHAPIRO & GERTNER, Esqs.,
Attorneys for Plaintiff;
BY: HARVEY SILVERGLATE, Esq., of Counsel.

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York;
BY: LAWRENCE B. PEDOWITZ, Esq.,
RICHARD WEINBERG, Esq.,
Assistant United States Attorneys.

MR. DERSHOWITZ: Your Honor, Mr. Schustek requested that if possible this be done in closed session.

THE COURT: I won't do that. I will point out who is present here, however, besides the attorneys and the parties.

MR. DERSHOWING: There is Mr. Ostrer's associate and Mrs.Ostrer and Mr. Ostrer's sister.

THE COURT: Who are you, sir.

MR. GREENFELD: Mr. Greenfeld. I am associated with Mr. Ostrer in business.

MR. DERSHOWITZ: And that is my father, your Honor, (indicating).

THE COURT: Very well. I don't see anybody else in the courtroom.

MR. PEDOWITZ: Your Honor, we would like Mr. Greenfeld removed.

THE COURT: I don't see any need for that.

What is the purpose?

MR. PEDOWITZ: We have certain information that he is connected with organized crime individuals.

THE COURT: I don't think that is enough.

We will proceed.

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STEVEN SCHUSTEK, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q You don't know Mr. Louis Ostrer, do you?

A No.

Q Did there come a time in 1970 when Mr. Hellerman involved you in a deal in two companies called Natco and Merchandise Plus?

A Yes.

Q Did there come a time in early 1971, January 15, 1971, when because of threats to your life you decided to cooperate with the Federal Bureau of Investigation and the United States Government?

A Yes.

Q Did that cooperarion result from a conversation you had with Mr. Hellerman?

A Yes.

Q And Mr. Hellerman introduced you, did he not, to Mr. Morvillo?

A Yes.

Q And did there come a time in January of 1971 when you had a meeting at which Mr. Hellerman was attending and initially two FBI agents, Me. Paul and Mr. Stapleton, and Mr. Morvillo later on, in the Drake Hotel?

A Yes.

Q At that time did you tell Mr. Morvillo the details of the Natco scheme?

MR. WEINBERG: Objection, your Honor. I think the witness should testify as to the conversation.

THE COURT: Yes, he should.

Q Tell us what occurred at that meeting?

A I gate a statement to the FBI with a general outline of what was the Natco scheme.

Q Your recollection is that the FBI at that time took notes of that meeting?

A They did.

Q And at some point you were shown a copy of those notes?

A I believe I was, yes.

Q Is it fair to say that by January 15, 1971, by the day of that meeting in the Drake Hotel, Mr. Morvillo knew you were criminally involved in the Natco bust out?

THE COURT: He can be asked if he told that to Mr. Morvillo or somebody else told it to Mr. Morvillo in his presence.

Q Did you state that in Mr. Morvillo's presence?

A I told them about my involvement in Natco. What the liabilities were, that was his decision.

Q You explained in detail your involvement?

A I did.

Q You explained to him that it was a bust out or a bankruptcy fraud?

A Correct.

Q Did there come a time shortly after that January 15, 1971 meeting that you struck a deal, made a deal, made an arrangement with Mr. Morvillo?

A Yes.

Q This arrangement entailed your testifying and cooperating and giving full information to the Government?

A That's correct.

Q In exchange for that the Government promised that it would go easy with you or --

A Well, the deal was that they would protect me, first of all, and that when the time came for me to plead, that they would make my cooperation known to the judge.

Q your part of the deal was that you would fully cooperate and fully disclose your total involvements in Natco and the Merchandise Plus case?

MR. WEINBERG: I think Mr. Dershowitz should ask non-leading questions, your Honor.

THE COURT: I assume most of this is not in dispute, but if it is, it ought to be elicited by questions --

MR. DERSHOWITZ: This is material we went over in Mr. Weinberg's presence and to which we are stipulating, in effect.

MR. WEINBERG: Mr. Dershowitz in his questions puts in adjectives and words which mean certain things in the context of the questions --

MR. DERSHOWITZ: I will rephrase the question, your Honor.

Q Can you tell us what you promised the Government as your part of this so-called bargain?

THE COURT: How is that relevant? He is a typical cooperating individual.

MR. DERSHOWITZ: He did tell the Government everything about the deal and, therefore --

THE COURT: Ask him that, if that is important, as to the Natco deal.

Q Did there come a deal when after you cooperation, your agreement to cooperate with the Government, that Mr. Hellerman told you about a deal involving an $80,000 check?

A Yes.

Q Is it fair to say that he told you that there was an agreement under which --

MR. WEINBERG: Objection, your Honor.

THE COURT: That is leading, you know.

Q Tell us precisely what it was that Mr. Hellerman told you was the nature of the deal.

THE COURT: First, give us the date and time and who was present.

Q When did this conversation occur, approximately?

A I would say approximately some time in the month of January, but I really --

THE COURT: What year?

THE WITNESS: 1971.

THE COURT: Who was present?

THE WITNESS: I can't recall the specific conversation, although I can recall conversations that dealt with this. I could not testify that it happened on a Tuesday at 2 o'clock --

THE COURT: Can you tell us where the conversation took place?

THE WITNESS: The conversations would have taken place, I believe, at a motel in New York.

THE COURT: Just yourself and Hellerman?

THE WITNESS: I have a problem answering that because of the circumstances, your Honor.

THE COURT: All right.

THE WITNESS: But I can testify that Hellerman specifically did tell me what was going to happen with this.

Q Can you tell us what precisely Mr. Hellerman told you?

THE COURT: Before you do that, do I understand this conversation took place In the presence of some other person whose name, because of your fears for your safety, you don't want to tell about?

THE WITNESS: No, not quite.

THE COURT: Did it or did it not take place in the presence of another person?

THE WITNESS: I don't recall.

Q Can you tell us what Mr. Hellerman told you?

A That arrangements had been made to get this $80,000 so that the shylocks could be paid off.

Q And Mr. Hellerman told you that arrangements had been made with whom?

A With the Government.

Q Did he name a specific person in the Government with whom the arrangements had been made?

A I can't specifically recall whether he did or didn't, but I know what I thought at the time.

Q Could you tell us what your state of mind was at that time?

MR. WEINBERG: Objection.

THE COURT: Sustained.

Q Do you recall having any discussion --

THE COURT: If the witness had a reason for drawing a particular inference, if something happened to give rise to an inference, he may be asked what happened which indicated to him who the person was and the Court will consider that.

Q Did any event occur which led you to draw an inference as to who the deal was made with in the Government?

A There was no question that it was Robert Morvillo.

THE COURT: What do you base that on? What took place or what did you see or hear that led you to believe that?

THE WITNESS: Firstly, I had the fact that Hellerman's even having the check surprised me, since I had turned the check over to the FBI in Florida --

THE COURT: You had turned over the check of this bank to the FBI in Florida?

THE WITNESS: You are talking about the $80,000 check?

THE COURT: Yes.

THE WITNESS: This check was turned over to the FBI in Miami. In fact, it never reached me. It was on deposit in a casino and since I was cooperating and the Government wanted the money back in New York, the FBI put me on a plane, had an agent meet me, we went to the office of the company that ran the casino and they gave the FBI guy a check made out to me, I believe, for this $80,000. So I was aware that the Government had possession of this money.

Q Can you explain the circumstances which led you to conclude that Mr. Morvillo --

A Knowing that I had turned the money over to the FBI and knowing how I came to them through Mike Hellerman, knowing of his cooperation with them, when he said that it had been arranged, well, the only one I could think of it had been arranged with was the Government and with Mr. Morvillo, since he was handling this.

Q Is it fair to say that Mr. Morvillo was the central figure at this time involved with you --

MR. WEINBERG: Objection.

THE COURT: Sustained. He may be asked if he was talking to Government persons other than Mr. Morvillo.

Q Your discussions were on January 15 and your deal was struck with Mr. Morvillo?

A That is correct.

Q When Mr. Hellerman introduced you to the Government, did he tell you that the man in the Government with whom he was primarily working was Mr. Morvillo?

A He did.

Q After Mr. Hellerman told you that the purpose of the deal was to cash the check and to pay off the shylocks, did there come a time when you actually obtained the $80,000?

A Yes.

Q Can you describe the circumstances under which that occurred?

A The arrangements were made and a bank account was set up --

Q By whom?

A They brought a lawyer named Kurland into it --

Q Do you know what Mr. Kurland's reputation in your community was at that time?

MR. WEINBERG: Objection.

THE COURT: Whatever his reputation was, it is justified.

Who selected Mr. Kurland?

THE WITNESS: Hellerman.

THE COURT: If he doesn't select him, I don't think he is competent to tell about his reputation. He found the right man for the job.

Q Is it fair to say in conversation with me previously you described him as a "wise guy"?

MR. WEINBERG: Objection.

THE COURT: Sustained. If he was selected --

Q Had you ever previously met Mr. Kurland?

A Once.

Q Can you describe the circumstances?

A It was at a restaurant and he was introduced to me and that was it.

Q Who else was present at that meeting?

A Michael Hellerman was the only one I specifically recall, and Sam Falgiano was there, it was his restaurant.

Q It was at Sam Falgiano's restaurant?

A That is correct. It was just a social meet-the-man, and we had a drink.

Q Did the circumstances of that meeting give you reason to believe that Mr. Kurland frequented that restaurant?

A No.

THE COURT: I don't see the relevance. Really, I don't.

MR. DERSHOWITZ: We are trying to establish what kind of a lawyer he was.

THE COURT: The Court knows what kind of a lawyer Mr. Kurland was.

Q Can you describe the circumstances under which you obtained the $80,000?

THE COURT: Is it different than Kurland's testimony?

MR. DERSHOWITZ: Slight different, yes.

THE COURT: All right.

A I went into the bank and I cashed the check for eighty some-odd thousand dollars and I turned the money over to Mr. Murray Winters.

Q In cash?

A In cash.

Q Which bank did you go into?

THE WITNESS: I don't recall the name of the bank, your Honor.

THE COURT: With whom did you enter the bank?

THE WITNESS: Absolutely alone.

THE COURT: Were you already known at the bank?

THE WITNESS: No.

THE COURT: By whom were you introduced tot he bank?

THE WITNESS: I don't really recall ever being introduced to the bank. Everything that was done was set up, really, away from me and without my knowledge.

THE COURT: But you walked into a bank where you were not known and took a check and converted it to $80,000 in currency?

THE WITNESS: Yes.

THE COURT: That was in New York City somewhere?

THE WITNESS: Yes.

THE COURT: Manhattan?

THE WITNESS: Yes. I am sure the records exist somewhere but I don't recall the name of the bank.

MR. GERSHOWITZ: Those records do exist, your Honor.

THE COURT: Who, if anybody, instructed you to go into the bank and cash the check?

THE WITNESS: Instructed me?

THE COURT: Advised you --

THE WITNESS: I went with Murray Winters and he waited outside. I went into the bank. As I recall, I had to call the day before to tell them because it was such a large cash amount and I guess I had a name of some particular officer to see and I went and said, "I am Mr. Schustek and I want to cash this check," and there was no problem.

Q At the time that you cashed this check, is it fair to characterize you as a cooperating person with the United States Government?

A I would characterize myself that way.

Q Is it fair to say that at this point you had made a promise that you would not engage in any further legal activity?

A I did.

Q Is it fair to say that You were very anxious to keep that promise?

A That is fair to say.

Q Is it fair to say that your activity in cashing that check was regarded by you as lawful and approved by the United States Government?

A I felt it was.

Q At the time you did cash that check you were fully aware that it was destined to be used to be given to Mr. Hellerman to pay off shylocks?

A That is what I was told was going to happen to it.

THE COURT: Told by whom?

THE WITNESS: By Michael Hellerman.

Q Did there come a time after this check transaction that you began to prepare for the Natco trial as a witness?

A Yes.

Q Is it fair to say you were the key Government witness at that trial?

MR. WEINBERG: Objection.

THE COURT: It is irrelevant. If he testified, he testified.

Q Is it fair to say that the Government in the probation report stated that were it not for your testimony there could be no conviction in the Natco trial?

MR. WEINBERG: Objection.

THE COURT: I don't see the significance of it. They may have stated it in the probation report.

Q Did you spend a considerable amount of time with Government lawyers and investigators in the preparation of your grand jury and petty jury testimony in the Natco case?

A I did.

Q Did you tell them everything to the best of your knowledge about the behavior of the various defendants in the Natco and Merchandise Plus case?

A I answered their questions truthfully.

Q Is it fair to say that the Government in questioning you -- the Government lawyers and investigators in questioning you about Natco expressed -- I will withdraw that question.

Is it fair to say that the $80,000 that was involved in this check was the single most important asset, the single largest asset of the company?

THE COURT: On the date the check was cashed?

MR. DERSHOWITZ: Yes.

A That would be fair to say.

Q And that in fact it could be characterized as, in the end, what the whole bustout involved, it was the attempt to get the $80,000 out, which was the ultimate act of the bustout?

A That is a fair characterization.

THE COURT: I don't understand that. I had been given to understand before they were looting it all along.

MR. DERSHOWITZ: I think the record will establish most of the other money was being siphoned off to pay prior debts.

THE COURT: Prior debts of whom?

MR. DERSHOWITZ: Of the arrangers of the deal.

THE COURT: As far as the bustout or embezzlement or bankruptcy fraud, or whatever it was, of Natco, that had been going on for some time, as I recall the testimony?

MR. DERSHOWITZ: Yes, your Honor. But it was an on-going corporation until the point of bankruptcy. This was to be the basic profit of the bustout.

THE COURT: In any event, it is $80,000.

Go ahead.

Q Approximately what percentage of the total amount of money busted out of the corporation for use of the swindlers did the $80,000 consist?

A I couldn't give you a figure, but it was a considerable amount.

Q Is it fair to say, therefore, that in preparing your testimony for the Natco grand jury and petty jury, the Government would have asked you in detail about the $80,000?

MR. WEINBERG: Objection to the form.

THE COURT: Sustained as to form.

Was this an overt act in the indictment for Natco?

Q Do you recall whether this was an overt act?

THE COURT: Don't you have --

MR. DERSHOWITZ: It was an overt act, your Honor.

THE COURT: It was?

MR. DERSHOWITZ: Yes.

Q Were you questioned about the $80,000?

A I can't answer that specifically. I really don't recall.

Q Do you recall generally what you were questioned about?

THE COURT: Whatever he was questoned about was in the trial transcript?

MR. DERSHOWITZ: No, I am talking about the trial preparation, your Honor.

Q Do you recall whether you were asked about the bustout generally for purposes of trial preparation?

A We discussed in great detail this bustout, but to answer specifically on whether I was asked about that specific $80,000, it is just too long ago. I I can say probably yes, because we discussed everything, but I can't say specifically yes.

Q Do you recall when you were asked questions about the Natco and Merchandise Plus matters whether you deliberately sought to withhold any information at that point?

MR.WEINBERG: Objection.

THE COURT: He may be asked as to his state of mind.

A Can you repeat the question?

Q Do you recall whether you deliberately sought to withhold information from the Government when they were seeking to prepare you for the trial?

A There was no way that I would have withheld anything. I was so grateful just to not, you know, really be walking around knowing someone was coming after me and I frankly saw this as a way out and I lived up to my part of the deal. I just there and whatever they wanted to know, I told them.

Q Do you recall as you sit here today, whether there came a time after you began to cooperate with the United States Attorney's office when Mr. Robert Morvillo warned you that if you gave the money to Michael Hellerman or used the money for reasons other than to satisfy corporate checks that you would be prosecuted?

A I don't recall any such thing.

Q Is it fair to say that at the time that you participated in this arrangement to cash the $80,000 that you did not believe that you were committing a crime?

A That thought never occurred to me.

Q Did there come a time when you were co-operating with the United States Government when in the company of various FBI agents you went down to the Natco headquarters?

A Yes.

Q And did that occur in January of 1971?

A I don't recall, but that would be about the time.

Q Can you give an approximate date consistent with the meeting at the Drake Hotel being on January 15, 1971?

A If the meeting was on the 15th at the Drake, then I imagine we went down to Natco within the next five to seven days, possibly two weeks, but I imagine just a few days thereafter.

Q Can you tell the Court what you observed when you went down to the Natco headquarters?

A I think, as I recall, they had locked the place up and there was a Suffolk County Sheriff there.

Q Did you conclude from that that Natco -- that there were bankruptcy proceedings against Natco?

A I assumed there was, yes.

Q Do you recall whether you had any discussion with any of the FBI agents about there being a bankruptcy against Natco at that time?

A Not offhand.

Q The people with whom you prepared for the Natco trial were Mr. Coghill and Mr. Brodsky?

A That's correct.

Q Do you recall the names of any of the agents?

A Which agents?

Q The FBI agents or other agents with whom you helped prepare for the trial in the spring and fall of 1972?

A I really had very little to do with FBI agents at this point. It was, I would say, 99 percent simply sitting with the Assistant U. S. Attorney and giving him the details and giving him the facts as I knew them.

Q Were there any other Assistant United States Attorneys with whom you had contact other than Messrs. Morvillo, Coghill and Brodsky?

A There have been others.

Q Involved in Natco?

A No -- wait -- I seem to have a recollection that there was another Assistant somewhere, but it was Brodsky and Coghill and Brodsky in particular who prepared the case.

THE COURT: Did it come out on the trial that you had gone to the bank and cashed the $80,000 through the efforts of Mr. Kurland?

THE WITNESS: I don't recall. I don't think so.

THE COURT: Did the fact of getting hold of the $80,000 on your part come out on that trial?

THE WITNESS: I really don't recall.

MR. SILVERGLATE: If I may help the Court, it did not, your Honor.

Q Did you ever in your cooperation with the United States Attorney's office in this District have occasion o speak to United States Attorney McGuire?

A I may have.

Q Or John Wing?

A John Wing, yes. McGuire, that is just a name to me, so I don't know, but Wing, yes.

Q Do you recall whether you discussed the Natco case with John Wing?

A It might have been mentioned but I would not have spoken to him about those matters, I don't think. It didn't work that way.

Q Would it have been in connection with another trial Mr. Wing was conducting against another defendant that he might have asked you about the Natco case?

A It might have been, but I really don't recall any substantial conversations with him.

MR. DERSHOWITZ: We have no further questions of this witness, your Honor.

MR. WEINBERG: Very briefly, your Honor.

CROSS EXAMINATION

XX BY MR. WEINBERG:

Q Mr. Schustek, do you ever recall being in the company or in the presence of Robert Morvillo when there was any discussion about the disposition of the $80,000?

A I have no specific recollection.

Q You related the fact that Mr. Hellerman told you that the $80,000 was going to be used to pay off the shylocks?

A Correct.

Q Do you recall whether or not Mr. Morvillo was present during that conversation?

A I can't recall.

2 Q In your discussions with Assistant United States Attorney Coghill and Brodsky you were relating to them your criminal activity in the Natco matter, is that correct?

A Correct.

Q And any discussions you had with any other Assistant United States Attorney dealt with your criminal activity in Natco, is that correct?

A I am not quite sure how to answer that. I had discussions with other United States Attorneys. Whether they involved Natco or not, I really couldn't say.

THE COURT: I assume Natco also included Merchandise Plus. This is really a Merchandise Plus check which was stolen, isn't it?

MR. WEINBERG: It was, your Honor.

THE COURT: I assume the questioning here includes Merchandise Plus as being part of Natco for its purposes.

THE WITNESS: I testified in another case for the Government and in preparing that case maybe that comes under the heading and that is why I want to be specific.

MR. WEINBERG: No further questions.

XX REDIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q Do you recall in your preparation for the case with Messrs Coghill and Brodsky whether or not either of them took any notes about the Natco prosecution?

A I am sure they took notes.

MR. DERSHOWITZ: No further questions, your Honor.

THE COURT: Anything else for this witness?

MR. WEINBERG: No, your Honor.

THE COURT: The witness is excused.

(Witness excused.)

MR. SILVERGLATE: Your Honor, at the last hearing you instructed counsel to prepare the balance of this record and preferably without the need for oral testimony. I think that we have done that and I would like to report on our efforts.

First of all, your Honor, I would hand up to the clerk a packet of materials called Petitioner's Supplemental Exhibits. I have already supplied the Government earlier with that packet --

THE COURT: What are they?

MR. SILVERGLATE: It consists largely of portions of transcripts of other trials held in this District and there is one bankruptcy proceeding in the Eastern District, and it is simply a compilation I thought would make it more convenient for the Court because those will be referred to in the brief.

THE COURT: Have you seen this?

MR. WEINBERG: I was given a copy prior to the hearing, your Honor, today, but I have not reviewed it.

THE COURT: I take it this is all Court records which the Court may judicially notice. If it turns out otherwise, Mr. Weinberg, you call that to our attention promptly.

MR. WEINBERG: I will, your Honor.

THE COURT: It is represented that these materials are all Court proceedings and matters of record either in this District or in the adjoining District, is that correct?

MR. SILVERGLATE: Yes. That is a table of contents, first page, inside the blue cover, which lists them.

THE COURT: All right, mark it as an exhibit.

(Plaintiff's Exhibit I was received in evidence.)

xx THE COURT: This is received in evidence subject to veriifcation by the Government.

MR. SILVERGLATE: I also have the packet of exhibits from the hearing, the so-called Hellerman hearing, and these are Defendant's Exhibits A through H, which I should hand up to the Court, and I notice some of them are still marked for identification and I would move to admit all of them which have not yet been admitted, and I already have given Mr. Weinberg a photocopy of each of these appropriately marked.

MR. WEINBERG: Your Honor, the Government will not object to the receipt of these exhibits. I just note that at least in the copy I received, Defendant's Exhibit G-1, there seemed to be a Telex to Assistant United States Attorney McCarthy, from Mr. Thornberg, Assistant Attorney General, and I assume there is no reason --

MR. SILVERGLATE: Oh, I thought that was taken out. I don't think the Court's copy has that.

THE COURT: The Court's copy has G-1 as a letter from Grayson to Schustek, February 25, 1971.

MR. WEINBERG: And there are other documents attached to that, your Honor?

THE COURT: Yes. The other documents seem to consist of a bank statement for Merchandise Plus and a letter from Bankers Trust Company addressed to Mr. Brodsky, a Bankers Trust Company account card, another bank statement, a copy of a deposit, Edward Kurland, Special, Bankers receipt subject to collection, a check, and a Telex from City National Bank of Miami Beach. That is the totality of it, and loose next to it is a Telex from Mr. Thornberg.

MR. SILVERGLATE: The Telex should be removed.

THE COURT: It is not part of my record.

MR. SILVERGLATE: That is correct, your Hnor.

THE COURT: I will remove it physically.

MR. WEINBERG: The envelope, first class mail, Mr. David M. Brodsky, the Government objects to that simply because there is no indication as to what was received in that envelope.

THE COURT: What is that offered to show, the envelope?

MR. SILVERGLATE: That was just in the pack of materials we had introduced at the trial. There is no reason to have that in, if the Government objects to it.

THE COURT: All right, the envelope is stricken out.

I think for the record the envelope should be marked for identification along with the Telex from Mr. Thornberg, so that the record will show what we were talking about. They will be removed and a new identification number given to them.

The Telex is J for identification and K for identification.

MR. SILVERGLATE: There is one other document which arrived this afternoon, and we had subpoenaed the

Port Authority police for the last hearing and they didn't show up and they finally made it this time, and there is a two-page report concerning the incident of Mr. Hellerman at the airport, at Kennedy Airport, before he was leaving for Europe, with a card, a so-called contact card clipped to it, and some newspaper clippings that were in their files.

THE COURT: Mark it for identification and show it to Mr. Weinberg.

MR. SILVERGLATE: Mr. Weinberg has read it. I showed it to him earlier.

(Defendant's Exhibit L was marked for identification.)

xx MR. WEINBERG: I object on the grounds of relevance.

THE COURT: It bears on Hellerman's credibility. It is an official record of the Port Authority and I will overrule the objection.

That is received in evidence.

(Defendant's Exhibit L was received in evidence.)

MR. SILVERGLATE: I would like to hold on to L just to make copies for myself and Mr. Weinberg and I will then return it.

THE COURT: All right, you may proceed.

MR. SILVERGLATE: There was a dispute, if your Honor recalls, concerning whether or not a copy of the Natco indictment, United States versus Falgiano, was turned over to defense counsel in the course of or prior to the Belmont Franchising trial. The Government and defense counsel have investigated this matter in an attempt to ascertain the truth and to stipulate to it and this is where we stand,

We have spoken independently, Mr. Weinberg and myself to Mr. McGuire and Mr. McGuire states he has no independent recollection as to whether or not he turned over the Natco indictment. He told me on the phone that he thought that if he had asked Mr. Brodsky for some information on Hellerman, if Mr. Brodsky turned it over to him he could assume he turned it over to defense counsel but, once again, he had no independent recollection.

I spoke to Mr. Brodsky and he said he had no memory of having been asked for the Natco indictment and no memory of having turned it over. I believe the Government has no further information from those two men.

MR. WEINBERG: That is correct, your Honor. I have told Mr. Silverglate that if he provides the Court with affidavits from Mr. Edelbaim and Mr. Goldberg which unambiguously state they never received the Natco indictment, the Government will not press the point that the Natco indictment was turned over.

THE COURT: It shows, as hindsight always shows us, the mistake of not marking 3500 and Brady material fully and correctly and adequately, and sometimes that happens in my own trials, during the recess they are marked and I don't always supervise it as well as I perhaps should, but here a blanket statement is made on the record, "I have given Mr. Goldberg and Mr. Edelbaum all of the other indictments in which Hellerman was involved." and there is no showing what was given and it would have been so simple to assign numbers to all of them and then you would have a numbered paper with an exhibit tag attached. However, you may proceed on that basis, if you like.

MR. SILVERGLATE: I will get those affidavits and submit them this week to the Court.

THE COURT: It would be doubtful if they can recollect.

MR. SILVERGLATE: There is actually a very clear recollection and I can explain to your Honor why.

THE COURT: Both these defense attorneys recollect they did not receive it?

MR. SILVERGLATE: Yes, and I can tell your Honor how they recollect it. Mr. Edelbaum recollected quite clearly what he did and did not receive and he said if he had received that he knows he would have asked questions about it and he went through the transcript and found he did not ask questions about it.

Mr. Goldberg said that he had heard about Hellerman being involved in a bankruptcy fraud from an interview that he conducted in his office of Hellerman at a time when unbeknownst to Mr. Goldberg Hellerman was an undercover agent for Mr. Morvillo and the U. S. Attorney's office.

THE COURT: It wasn't really that, he was a cooperating individual.

MR. SILVERGLATE: Well, cooperating individual, and that conversation was in fact testified to in the Belmont case because it was during the course of that conversation that Mr. Hellerman said to Mr. Goldberg that Dioguardi had nothing to do with the Belmont fraud --

THE COURT: You mean the Natco fraud?

MR. SILVERGLATE: The Belmont fraud. And in the course of that conversation, which was taped by Mr. Goldberg, and he is trying to find the tape for me, the Natco question came up and Natco was mentioned by Hellerman to Mr. Goldberg. So Goldberg knew about just the bare bones, he knew there was a Natco bankruptcy fraud in which Hellerman was involved because Hellerman told him that. Edelbaum did not know it, and neither of them had been given a copy of the indictment, and that is the situation that will be reflected in the affidavits.

MR. WEINBERG: Your Honor, if the affidavits from Mr. Edelbaum and Mr. Goldberg clearly state that they never received the Natco indictment, the Government will not press the point that the Government actually turned over a copy of the Natco indictment. Of course, the Natco indictment was a public document at the time.

THE COURT: It wouldn't really matter if Mr. Goldberg had it or not, unless Mr. Goldberg's cross-examination of Hellerman was such as to put a reasonably prudent attorney on notice of it. Knowledge of Mr. Goldberg is not to be imputed to Mr. Ostrer.

MR. SILVERGLATE: Your Honor, nobody, neither Mr. Goldberg nor Mr. Edelbaum had any idea about the $80,000, of course. Even the indictment doesn't specifically mention the $80,000 amount. It says amounts in excess of $5000 were transported --

THE COURT: As I read the indictment, they are talking about the first attempt to cash the check.

There is nothing in the indictment about the later collection of it through Mr. Kurland.

MR. SILVERGLATE: If that was in there, we might assume Mr. Kurland would be a defendant in the case.

THE COURT: Let's not get into that. When will we have an answer on what Mr. Edelbaum knew?

MR. SILVERGLATE: By the end of this week.

THE COURT: Fine. You may proceed.

MR. SILVERGLATE: Mr. Weinberg has turned over to me a packet of materials that includes the Wing letters concerning the safehouse, the placement of Mr. Hellerman in a safehouse. I assume you filed those with the Court, Mr. Weinberg?

MR. WEINBERG: I believe they should have made copies of the letter I turned over to your Honor. If not, I will provide the Court with copies.

THE COURT: Let's make them part of this record if they are relevant. They have to be marked as an exhibit. Are they all dated after the verdict?

MR. WEINBERG: Yes, your Honor. To simplify matters, I will send a copy to the Court with an accompanying letter.

THE COURT: You want them to be a part of this trial record?

MR. WEINBERG: Yes.

THE COURT: We will reserve an exhibit number for them.

MR. WEINBERG: That would be Government's Exhibit 1.

THE COURT: Government's Exhibit 1 is reserved, being the letters pertaining to efforts on the part of Mr. Wing or his colleagues to get Mr. Hellerman admitted into a safehouse. I must say about that that the agreement of cooperation says they will use their best efforts to do that. I think that any attorney seeing that agreement would understand two things, that the Government has to keep its word with Hellerman or they will never get anybody else to cooperate and, No. 2, that it doesn't help a defendant very much to cross-examine a witness about his arrangements that he is going in a safehouse because the jury might get the wrong idea, they might think the defendants were connected with organized crime and likely to rub out the witness. So it gets a little frivolous when you talk about an agreement to put somebody in a safehouse.

MR. SILVERGLATE: In the Belmont trial, your Honor, counsel were very careful not to allow anything in such as the introductory clauses in the agreement which talked about threats. The only cases in which that entire agreement got in were cases where there were acquittals.

THE COURT: It is not an exact science, as I am sure your colleague tells his students.

MR. SILVERGLATE: It may not even be an inexact science.

Mr. Weinberg has undertaken to go through the Natco file, the non-public portions of it. There was some delay in doing that because the file was shipped from the Record Center at Bayonne to this office, but not to Mr. Weinberg, and it was lost in transit somewhere for a couple of weeks. It has now been located. What he is going to do, as I understand it, is to go through it and let us know if there is anything in there that bears on issues in this case that has not yet --

MR. WEINBERG: I have already made an examination of those files, your Honor, and in a letter dated today, which I turned over to, I guess, Mr. Dershowitz, I explain that I was unable to find anything in those files relating to the release of the $80,000 to Michael Hellerman or an attorney for Natco Beauty Supply Center, Incorporated for Merchandise Plus, Incorporated.

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Mr. Dershowitz drew my attention to the possibility of any materials being in another United States Attorney's file, namely, the Civil file in connection with the Natco bankruptcy fraud, and I have told Mr. Dershowitz that I will undertake to review those files and what I will be looking for in the examination of those documents is any information pertaining to the release of the $80,000 to Michael Hellerman or to Mr. Kurland or to an attorney who purported to represent any of the corporations.

MR. DERSHOWITZ: In light of the testimony elicited from Schustek about notes being taken by Mr. Coghill and Mr. Brodsky, we would also ask the Government to examine the files to determine whether there are any such notes.

THE COURT: Isn't that somewhat far afield? What on earth are we getting at?

MR. DERSHOWITZ: We want to establish, unles the Government is prepared to stipulate, and we had conversations which led me to believe maybe they are prepared to stipulate, that the United States Government was aware of the disposition of the $80,000 prior to --

MR. WEINBERG: We never had that kind of discussion, your Honor.

THE COURT: You say the United States Government was aware and I think that at least -- perhaps I should reserve comment, but certainly what took place with respect to its being turned over to Kurland was known to Mr. Morvillo at or about the time it took place.

MR. DERSHOWITZ: We are interested in establishing whether or not the Government knew, which we submit they did, that that $80,000 was disposed of by Mr. Hellerman, giving it to loan sharks, and if that appears in notes taken by Coghill or Brodsky, that would be extremely relevant.

THE COURT: Okay, will you look for that, please, in the 3500 material in the Falgiano trial?

MR. WEINBERG: Yes, your Honor, if it relates to the release of the $80,000 to Hellerman and his using the money to pay back the shylocks.

MR. SILVERGLATE: The only other loose end we have is the Renner, R-e-n-n-e-r, material concerning his interviews with Hellerman and any other material he has.

I have an appointment for this afternoon at 3.30, and they are waiting for me now, to go over all of the material which has finally been transcribed. As I wrote to the Court and to my brother attorney, there was a delay in transcription, but that has been done. Mr. Renner and his attorney are waiting for me and I will go and look it over and contact Mr. Weinberg and tell him whether there is anything in there which relates to the issues --

THE COURT: Perhaps you can stipulate whether or not the book substantially agrees with the tapes on these issues.

MR. SILVERGLATE: I believe we can, your Honor, because there will be written documents from Renner and they are relevant or not relevant.

THE COURT: It seems inconceivable that an experienced author, Renner, would write a book like this from tapes and deviate material from the tapes.

MR. SILVERGLATE: That is what Mr. Renner's lawyer tells us.

THE COURT: And who is that?

MR. SILVERGLATE: Mr. Leonard Wexler, of Smithtown, New York. I will go through all that material this afternoon and tonight and I will call my brother attorney tomorrow morning and let him know what was in it and I think the best thing is if I call your Honor's law clerk to let your Honor's clerk --

THE COURT: I think you should come in tomorrow and finish this hearing. That was my plan. I thought if there was anything like that I had to take, I would take it tomorrow.

MR. SILVERGLATE: I don't know if there is anything or not at this point, anything Mr. Weinberg would be interested in, and I don't imagine it would require anybody being in court, if your Honor would give us that week to go through it, talk about it and decide whether or not any part of it should be filed with the Court.

THE COURT: Is that agreeable with you?

MR. WEINBERG: I need the opportunity to review the transcripts from the tapes.

THE COURT: Either they will substantially support the book or not. The presumption of regularity should attach to this book.

MR. WEINBERG: We would like to review the transcript.

THE COURT: All right, please do so.

MR. SILVERGLATE: I will get the transcripts to the Government tomorrow and I don't like to leave it open, if we could have a period of time, perhaps no more than a week -- I don't know how long he will need to go through them because we don't know how extensive they are -- if we could have one week from today to file with the Court whatever transcripts we agree to file?

THE COURT: That is agreeable with me.

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MR. WEINBERG: That is fine, your Honor.

THE COURT: Is there any more to cover on the 77 case?

MR. SILVERGLATE: Assuming that the record will be closed by a week from today, we will need a briefing schedule.

THE COURT: I will come back to that before you leave for the day.

(Recess.)

THE COURT: As I understand it, by Friday I will have the results of the Renner tapes, or a stipulation to obviate any concern with the tapes?

MR. SILVERGLATE: I thought we had asked for a week from today, your Honor?

THE COURT: Atl right.

And you will have the Natco material by Friday?

MR. SILVERGLATE: Yes.

THE COURT: Thereafter, what, if anything, will you have?

MR. SILVERGLATE: That should be it.

THE COURT: Will you have anything, Mr. Weinberg?

MR. WEINBERG: Nothing further, your Honor, unless there is something in Mr. Goldberg's and Mr.

Edelbaum's affidavit which will warrant --

THE COURT: If that is the case, notify chambers and your adversary immediately.

MR. WEINBERG: Yes, your Honor.

THE COURT: You said you wanted to submit post-hearing memoranda and I would like you to give me the dates when you will find it convenient to do so. Discuss the dates off the record, and quickly, please.

(Discussion off the record.)

THE COURT: The petitioner, or plaintiff, will file his brief June 20, the Government will respond by June 30, and the plaintiff has a week thereafter in which he may notify the Court that he wants to file a reply brief and, if so, it will be done within that period of one week. No new material is to be in the reply brief and it is not to be filed unless considered essential by counsel.

MR. SILVERGLATE: Absolutely, your Honor.

THE COURT: Subject to scheduling of briefs, the matter is marked fully submitted and decision reserved. Make sure the clerk has all the exhibits.

There is one you have to make a copy of and that should be copied and mailed in to chambers. The rest should be left with the clerk today.

MR. WEINBERG: Your Honor, the material I submitted to the Court, with copies to Mr. Ostrer's attorney, specifically the Brady material and 3500 material turned over in the initial trial, do you want to mark that as exhibits in this hearing or will that be considered as part of the record?

THE COURT: Perhaps it would be best to mark them as exhibits.

Do you have them with you? You can state clearly for the record what you have and I will deem them marked.

MR. WEINBERG: Your Honor should have a copy of a January 8, 1973 memorandum from Mr. Wing to Mr. McGuire.

No. 2, the Court should have a copy of a memorandum of agreement between the Government and Mr. Hellerman dated October 19, 1972.

The Court should have a copy of what was marked in U.S. against Ostrer as Government's Exhibits 3544 and 3545, and your Honor should have copies of indictments in United States against Dioguardi, 70 Cr. 967, copy of an information, United States against Hellerman, 72 Cr. 146, and a copy of the indictment in United States of America against Soldano, 71 Cr. 558.

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In addition, your Honor received a copy of the Natco indictment which, pending the filing of Mr. Edelbaum's and Mr. Goldberg's affidavits, the Government will not insist that that material was turned over to Mr. Ostrer's counsel at the time of the Belmont trial.

MR. SILVERGLATE: I would think, your Honor, in any event, the copy of the Natco indictment should be made part of the record not as having been turned over but simply for --

THE COURT: For its relevancy, made part of the record here, yes.

Anything else?

MR. WEINBERG: Nothing further, your Honor.

THE COURT: Thank you, gentlemen.

WITNESS INDEX

Name	Direct	Cross	Redirecr	Recro
Steven Schustek	3	24	25	

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
I		27
L	30	30

COPY RECEIVED
NOV
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